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# **A plea for Open Parliaments in the Black Sea Region**

the case of  
**Romania, Republic of Moldova,  
Bulgaria and Georgia**



Bucharest  
December 2008



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***A plea for Open Parliaments in the Black Sea Region:  
the case of Romania, Republic of Moldova,  
Bulgaria and Georgia***

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for Regional Cooperation  
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Started as an innovative approach challenging the “traditional” topics addressed when analyzing the political environment of the Black Sea Region (always associated with debates upon security dynamics, geo-strategy etc.), the project proved not only that debates and further advocacy efforts for making the national Parliaments in countries in this region are important and up-to-date, but that it is a fundamental prerequisite for non-governmental actors to continue working together for turning the fragile democracies in the region into viable ones.

Other colleagues from organizations across the region have joined our efforts during the project, making us understand that the topic of parliamentary transparency and accountability is worth to be further explored and improved in a wide region. In that respect, we would like to thank Mustafa Durna and Sibel Erduman from TUMIKOM, Turkey, Vugar Bayramov from the Center for Economic and Social Development (CESD), Azerbaijan, Edward Rakhimkulov from the Parliamentary Development Project for Ukraine (PDPII) and Vladimir Danchev, the Head of the Regional Secretariat for Parliamentary Cooperation in South East Europe (RSPC) for their contribution to the project.

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## **Why “opening” Parliaments in the Black Sea Region?**

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Scrutiny of politicians and civic participation in the decision making process of the countries in the Black Sea Region area have been seriously affected by the high opacity of public institutions and lack of proper mechanisms for holding elected representatives accountable for their activities.

While this aspect may seem minor as compared for example to the recent military conflict in Georgia - a country included in the research - which has marked the change of security approach in the region and in the international arena as well, there is a strong connection between the two. The weakest public control and interest in the domestic political life is, the highest the risk of appearance of abusive and/or non-democratic behaviors in the still fragile democracies of the region.

Although the degrees of transparency vary from one country to another, according to the stage of transition towards a consolidated democratic society, the origin of the problem can be found in the common past experiences. Consequently, this has had a direct impact on the general attitude of the public in these countries towards the political class, manifested through a sentiment of distrust not only in the politicians as individuals, but also in the fundamental institutions of the State as a whole. In this context, the parliaments, although populated by directly elected representatives of the citizens, have been no exception to the rule. The very low real openness to dialogue of MPs in-between elections towards the citizens and the NGOs and the lack of information regarding the specific activities of MPs in general and of individual MPs in particular, have led to the lack of effective civic involvement in the legislative process. As a result, legislation also may imply the risk of not being entirely adequate for the segments of the society they are designed for and consequently their effects lead to further dissatisfaction and distrust in the political leaders and public institutions.

Although parliaments should be the fundamental expression of democracy in all constitutional democracies in the region, several barometers show a severe lack of confidence and interest in the legislative process in most countries in the Central and South Eastern Europe. While research investigates the level of trust in democratic institutions and figures show severe alteration of the sense of democracy and representation, less effort is paid to identifying the causes of this phenomena. This leads to a generalized apathy of citizens towards politics in general including the legislative process, which ultimately affects the social and economic day-to-day life in these countries.

Therefore, the present study comes to investigate the degree of *openness* of national parliaments in Romania, Republic of Moldova, Bulgaria and Georgia, by assessing the perception of relevant institutional civil society actors while also commenting the legal framework of regulating communication with the public. The research is based on qualitative interpretation of responses provided by numerous nongovernmental organizations, trade unions and business' associations to a common questionnaire that was drafted by project partners. This qualitative analysis could have been elaborated as information was collected via questionnaires that addressed some fundamental dimensions of transparency and accountability of national parliaments in the four countries initiating the project:

- The relevant legislation/internal regulation of national parliaments regarding public's access to information, participation in the legislative process (attendance at parliamentary meetings, standing committees' meetings, public hearings etc.)
- Relevant stakeholders' (NGOs, trade unions, mass media) assessments on several aspects related to parliamentary activity and transparency, including each category's interest in specific parliamentary functions, activities etc.
- Accountability mechanisms in place in the four countries: access to individual MPs' votes on bills, activity of elected officials in their constituency offices, mechanisms for communicating with MPs etc.

All above mentioned criteria were evaluated based on a set of *transparency and accountability indicators*, according to which respondents were asked to rank each dimension related to MPs' work on a scale from 1 to 5 (1 being the lowest scored and 5 the highest). General aggregated results indicated a rather interesting "map" of the parliamentary *transparency/openness*: the highest degree of *perceived transparency* is in the Republic of Moldova, with a general score of 3,38, followed by Bulgaria, with 3,19 and Romania with 2,97<sup>1</sup>. If analyzed in the context of the existing prerequisites for transparency in each of the three countries, results shall indicate otherwise: formally, Romania has the most legislative/institutional mechanisms in place that theoretically allow for an increased transparency of information related to the Parliament, similar to Bulgaria, while the Republic of Moldova has limited access to information on Parliament and MPs activity. A possible explanation of the results may be that

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<sup>1</sup> As the research in Georgia was performed during the hard times of the military conflict in 2008, such aggregated index developed during the research was not considered relevant in this particular case. For the Georgian case, CIPDD investigated the already existing national representative surveys which depicted the general situation of public perception of the Parliament before the conflict.

of lack of reference systems: while not being aware that in other countries in the region, NGOs and citizens, for example, may have access to all sorts of information related to MPs works (such as individual votes, attendance, expenditures etc.), one cannot objectively rank *transparency* unless comparing it to its own past experience. Therefore, while the present may be in some cases perceived as better in terms of transparency/access to information etc. as compared to the past (especially in countries “accustomed” with the soviet rule), there is still need for an improved capacity of *comparing* not only historically, but also regionally, with other emerging/young democracies in the region.

At the same time, a wider access to information regarding public affairs (not only parliamentary, but also information related to government’s and local public administration’s management performances) means also learning about aspects that are not always satisfactory for the beneficiary, such as, for example he or she may learn that MPs massively skip parliamentary sittings or that they misuse public funds etc, this kind of answers being likely to generate an altered perception of transparency<sup>2</sup>, including here a personal valuation of the concept. Concretely, if people know less, they are tempted to assume that this is the way to do it and consequently they have a positive understanding of the institution’s transparency (as in the case of the Republic of Moldova). The corollary of this situation is when people have more access to information, the higher are their expectations regarding the responsiveness of the institution, as well as the behavior of public actors: therefore, although formally transparent, the information related to parliamentary activity does not satisfy the respondent from other viewpoints (the whole legislative process is not enough participative, it doesn’t care about the specific needs of a group etc.), therefore determining him/her to give a low rank of the transparency issue.

Beyond quantitative assessments and numeric “labels” for the stage of *perceived* democracy, the present study directly addresses the two main categories of actors that (should) continuously interact for making policy dialogue more open:

- *Civil society* (including here NGOs, CSOs, trade unions, business associations etc) from countries in the region, as it directly helps advancing democracy mechanisms. Although *means* may vary from one category to another (NGOs being more likely to use civic pressure and advocacy campaign, while business associations may prefer a

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<sup>2</sup> Transparency here may induce a more general sense that is not necessarily associated with the mere aspect of providing access to information, but rather with a dimension of the institution’s accountability.



more discrete lobbying), in the end they all lead up to requiring access to information which is a clear expression of democracy.

- *National Parliaments and MPs from countries in the Black Sea Region*, as they are offered the opportunity of seeing how local civil society perceives them in terms of openness/participatory decision - making. Furthermore, the study also advances concrete solutions for improving the transparency of the national Parliaments in the selected countries, which can be further explored by responsible officials.

Yet, the study advocates for the importance of a strong civil society in the region: NGOs should be the vectors of change in the still incipient democracies of the Black Sea Region, where the rule of law is not enough institutionalized and there is always a high potential of conflict. Therefore civil society should grow independently, be very active and acquire professional skills in monitoring the correct functioning of democratic mechanisms.

It is equally important to bring common issues affecting the democratic rule in these countries to a regional dialogue, as revealing them may be the first step to finding the proper solution.

This is mostly what the present study serves for. To understand that there is a growing need of strengthening cooperation and civic dialogue in the Black Sea Region not only on issues related to security matters and strategic calculations, but also on more accessible topics for the civil society, such as parliamentarism, participation, civic engagement - ingredients that are vital for any democracy. Comparison may not always be the best way to do it if local conditions are ignored, yet is a first step within a research that could be further refined, considering the local factors, pre-existing conditions etc. Opening the dialogue is the first condition for “opening” national parliaments in the region, which is making them more transparent, accessible and cooperative with the civil society and citizens in general. The role of the civil society in that respect should not be underestimated.

## Common research methodology

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All national reports included in the present study were elaborated based on a common research methodology, priority agreed by all four project partners, under the coordination of the Institute for Public Policy (IPP), Romania.

The national researches, including qualitative analysis of legislative/institutional framework and quantitative assessment on the perceived transparency of legislatures were conducted during June - August, 2008<sup>3</sup>. Draft versions of national reports were discussed in a regional conference called *Mechanisms for monitoring the National Parliaments and making elected officials from the Black Sea Region accountable to their voters*, held in Bucharest during October, 9 - 11, 2008. Main conclusions of the conference were further integrated by all project partners in their national reports, as well as constituted the baseline for a common statement regarding strategies of advocating for more transparent and accountable parliaments in countries in the region.

Specific research methodology and tools used by each project partner included:

1. **Assessment of relevant legislation/internal regulation** of national Parliaments regarding public's access to information, participation in the legislative process (attendance at parliamentary meetings, standing committees' meetings, public hearings etc.)

All project partners were asked to review the main legislation regulating transparency and free access to information in their countries and to identify potential incentives/obstacles in guaranteeing free access to information to all interested parties.

2. **Assessment of relevant stakeholders' (NGOs, trade unions, mass media) actions towards gathering information related to parliamentary works, relevant advocacy work at parliamentary level** etc.

The quantitative research was conducted based on a set of two standardized questionnaires<sup>4</sup> common to all national researches (one for NGOs/CSOs and one for trade unions/business associations) which was applied to a sample of

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<sup>3</sup> As Romania has recently had parliamentary elections on November 30, 2008, conclusions of the present study are valid for the former Parliament/MPs holding office.

<sup>4</sup> The sample questionnaire for NGOs is hereby attached to this study (Annex 1).

subjects including: NGOs<sup>5</sup> active in the field of parliamentary works/advocacy/watchdog, preferably selected from as many localities as possible, trade-unions, business associations, mass-media trusts (same criteria of geographic representativeness as for the NGOs). Each partner managed this activity at national level.

The questionnaires were distributed electronically and each of the responses included the name of the person filling in the information and the name of the executive director/president of the organization. At the time of the distribution of questionnaires, respondents were clearly informed on the purpose of the documentation and asked for their permission to use nominal reference within the national reports. Collection of answers from all categories of respondents was done in July and August, 2008.

The number of recipients of questionnaire was deliberately set up higher than the usual number of civil society actors benevolently reacting to such research, in order to maximize the responses' rate as much as possible. Although there are significant differences between the number of respondents per each category in the four countries, the core idea of this research dimension is not necessarily the sociological representativeness, but the hint of *perceived democracy* and *participatory culture*, given the fact that most respondents who provided answers to our questionnaire were usually the most active civil society actors in the respective countries. Details on the obstacles in documenting stakeholders' perceptions could be further found in each report and figures/percentages must be interpreted in the limitation provided by the small number of respondents per each category. While the conceptual indexes agreed by the experts working in the present research are an important and useful tool which is worth being further explored, figures and statistics attached to each index are rather an example of how such indicators may be measured and not necessarily a valid, wide representative general score for the research dimension.

The second stage of the field, empirical research consisted in *qualitative interviews* with persons from each target category: at least 2 interviews carried out for each type of institution (NGO, trade union, business association, media trust), the main purpose of this initiative being that of cross - checking information from the questionnaires and of underlining any potential personal opinion of the respondent on the issue of parliamentary openness. *Semi-standardized interview guides* have been used for carrying out the interviews, which were completed immediately after collecting all questionnaires.

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<sup>5</sup> Number of stakeholders included in each national research varied according to the development of the civil society sector and/or availability to involve in the project.

- 3. Assessment of accountability mechanisms in practice:** access to individual MPs votes, activity of elected officials in constituency offices, mechanisms for communicating with MPs

Based on the answers provided by stakeholders to the questionnaires, as well as making use of own reflection regarding the level of transparency/openness of Parliament/parliamentary related activities, each national coordinator filled in a grid (*Checklist on Open Parliaments*<sup>6</sup>), providing a synthetic view over the situation in each country.

The grid included information on: criteria for assessing indicators, methods of measurement of these criteria, quantitative indicators, qualitative assessments, score granted to the research dimension, observations of the national coordinators.

- 4. Creating a set of transparency and accountability indicators** based on which national coordinators have assessed the degree of openness and transparency of their parliaments, as well as accountability of elected representatives towards the public

Ultimately, all project partners have used the main following indicators:

- a) Stakeholders' general interest in the activity of the national Parliament;
- b) Relevant available information from and about the Parliament;
- c) Information on the impediments in accessing information from/about the Parliament;
- d) General openness score for the national Parliament.

Each indicator was ranked according to a scale from 1 to 5, with 1 being the lowest and 5 the highest possible score for the respective indicator. Several items of the questionnaire were "graded" by respondents accordingly, while the last indicator - *general openness score* - is an aggregated index calculated as average score of all indicators.

All indicators and corresponding scores attached were included in the above mentioned grid in each of the four countries.

- 5. Regional Debate Mechanisms for monitoring National Parliaments organized by the Institute for Public Policy - the regional coordinator of the project - in Bucharest, during October 9 - 11, 2008:** during the regional debate, project partners have

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<sup>6</sup> A copy of the grid is attached in Annex 2 of the study.

presented the main preliminary findings of each national research, focusing on a common structure that was proposed for the national reports: a section on legislative and institutional framework regulating transparency in each country, a distinct chapter dedicated to the assessment of relevant stakeholders on transparency dimensions (according to the methodology described above) and primary conclusions based on information processed so far. The debate had a double role: firstly to allow project partners to share and compare information on each of the research dimensions and secondly to inspire them in completing the final conclusions/recommendations' chapter, by referring to common experience/practice in the region. Project partners have also made qualitative comments on the problems they identified during the research with respect to the (lack of) transparency of their Parliament, setting up the premises for further work to be done by the civil sector in each country in order to eliminate/reduce these problems.

Last but not least, during the regional debate all four project partners have advanced ideas for the common strategy on further advocating for more open parliaments in countries in the Black Sea Region, a document which was finalized after a round of email consultations between project partners post-debate.

- 6. *Local roundtables for discussing/finalizing the national reports.*** 4 local roundtables were organized in Bucharest, Chişinău, Sofia and Tbilisi during October - November, 2008, with the explicit goal of raising awareness of local stakeholders (NGOs, trade unions, business associations, media) in each country upon the need to involve further in "opening" national parliaments. Main conclusions and proposed strategies in that respect were discussed with peers in each of the four countries and considered in the final version of the study.

Hereinafter, the present comparative study is the result of an in-depth research conducted through different means in each of the four countries and subject to consultations with other relevant actors at national level. Still, as one of the main objectives of the project/study is that of raising awareness of relevant stakeholders in the region - civil society in particular - upon the need to further pressure for more transparent governance, any further contribution to the present research from the envisaged beneficiaries is not only welcome, but also largely encouraged by all national coordinators.

**Transparency, accountability and civic participation**  
**ROMANIA**

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## ***I. Argument***

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*“Governing people without information for the people, or without the means to reach information, is nothing but the prologue of a farce or of a tragedy or, maybe, of both. Knowledge would always rule on ignorance, so people who intends to self - govern needs to arm with the power of the information”*

James Madison, letter to W.T. Barry, 4 august 1822<sup>7</sup>

The Parliament is the fundamental institution of a consolidated democracy. Economic prosperity, as well as the respect for human rights is associated with healthy parliamentary transparency, accountability and civic participation at all levels of the government, from the legal process to the empowerment of legislation. Monitoring the Parliament's activity and openness is part of the *watchdog* role of the civil society during the process of democratic consolidation if we have in mind the parliamentary functions: representation, the legislative function and the control of the government.

The present study is continuing the Institute for Public Policy's efforts of monitoring the Romanian parliamentary activity, by issuing periodic reports on the activity of Romanian MPs during sessions, drafting statistic and qualitative analysis of their activities in constituency offices and analyzing expenditures engaged by Parliament's Chambers on each deputy/senator's related activities. Such work would not be possible in the absence of formal instruments guaranteeing free access to information from and about the parliamentary works, even if in some cases such information is not always easy to access. Therefore, through the present research, we have tried to identify several aspects related to legal, actual and perceived transparency of the Romanian Parliament<sup>8</sup>, while also providing a general overview for anyone interested in this topic, be that fellow colleagues from NGOs in country or abroad, representatives of domestic or international organizations, journalists etc.

In this context our study follows three ways for answering the questions of how open is the Romanian Parliament and what is possible to do in order to raise its

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<sup>7</sup> Quoted by Jeremy Pope in *Access to information: whose right and whose information?*, Global Corruption Report 2003, Transparency International, 2003.

<sup>8</sup> The Romanian Parliament is the supreme representative body of the Romanian people and the only legislative State authority. The Romanian Parliament is bi-cameral, with 468 MPs elected for a 4 year mandate.



transparency and accountability. We examined the legal framework of transparency applied to the parliamentary level, then the practices and perceived obstacles in using transparency instruments expressed by various categories of civil society actors (NGOs, trade unions, media etc) and last, but not least, we assessed the present situation of the openness of the Parliament based on common agreed, scientific and measurable criteria.

For the Romanian general public and beneficiaries of this research, the main conclusions of the present study are of a particular significant importance in the actual political context: since Romania has recently had parliamentary elections and is on the verge of appointing a new Parliament starting with December, 12<sup>th</sup>, 2008, it is even more important to learn what are the drawbacks in terms of transparency and accountability of the former Parliament, in order to clearly State what should be done further for eradicating/diminishing such deficiencies. Furthermore, the research is equally important for raising the topic of “parliamentarism” in the new Romanian political context, as our political system has moved in the past four years between moderate parliamentarist regime to profound semi-presidential one. Last, but not least, in its position as a new member state starting with 2007, Romania should prove that the fundamental criteria of a functional democracy lies in the heart of the democratic system - which is the legislative - and that efforts will be further done for correcting the public image of the Parliament in front of the Romanian citizens.

## ***II. Legal and institutional framework for an open Parliament in Romania***

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The Romanian legal framework on public institutions' transparency and free access to information, maybe surprisingly, is one of the best in Europe. Unfortunately, as we will see, the legal framework only, is not enough to ensure the effective transparency of institutions. Guaranteeing the access to public information and giving citizens the legal instruments to obtain it, doesn't automatically mean efficient law enforcement. The minimum legal standards are not enough to ensure the openness, the fast and easy access to information whenever needed, through actions in law or for the mass-media. It is very often a matter of interpretation given to some provisions of the law by those civil servants responsible with providing answer to FOIA requests<sup>9</sup>, therefore making the whole effort of ensuring fair and unrestricted access to public interest information more difficult and liable to personal approach.

Most important legislative acts regulating free access to information/transparency, as well as legal limitations to these, in Romania are:

1. The Romanian Constitution, amended in 2003;
2. Law no. 544/2001 on free access to public interest information, published in the Official Gazette no. 663/October 23, 2001;
3. Law no. 677/2001 regarding persons' protection against processing personal data and free movement of this data, published in the Official Gazette no. 790/December 12, 2001;
4. Law no. 182/2002 regarding classified information, published in the Official Gazette no. 248/April 12, 2002;
5. Law no. 96/2006 regarding Deputies' and Senators' Statute, republished in the Official Gazette no. 763/November 12, 2008
6. The Internal Standing Orders of the Chamber of Deputies, adopted by the former legislative (2004 - 2008);
7. The Internal Standing Orders of the Romanian Senate, adopted by the former legislative (2004 - 2008);
8. The Internal Standing Orders of the Joint Sitzings of the Chamber of Deputies and of the Senate, adopted by the former legislative (2004 - 2008).

The presentation of the Romanian legislation on the Parliament transparency will emphasize two aspects. First, the law is establishing a minimum standard, while in practice, doing more to open the public institutions towards the citizens

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<sup>9</sup> Freedom of Information Act requests issued based on Law on free access to public interest information (Law no. 544/2001 in Romania).

is always possible. Second, the existence of the legislation is not always synonym with a proper enforcement in Romania, and there is always a possibility for those responsible with applying the legal provisions to act abusively and deny citizens/civil society's access to public interest information. Therefore, the elaboration of specific legislation should be always accompanied by training of responsible staff/officials, in order to have a consistent enforcement. It is equally important to constantly monitor the latter, as they tend to ease the exigencies in enforcing the law once the general public's perception becomes a positive one on the overall environment.

Article 31 of the Romanian Constitution is dedicated to the right to access information. It stipulates that "a person's right to access any information of public interest shall not be restricted<sup>10</sup>." In this context, the "public authorities, according to their competences, shall be bound to provide correct information to the citizens in public affairs and matters of personal interest<sup>11</sup>."

The existence of provisions regarding the right of accessing information in the Constitutional text represents both a symbolic and legal fact. It leads to the need of drafting a special separate law regulating the freedom of information and citizens' access to public interest information. It indicates that the Romanian legislative body is "concerned" with institutionalizing transparency concepts in the Romanian legal framework.

The limit of the right to information is also stipulated in the Romanian Constitution: it "shall not be prejudicial to the measures of protection of young people or national security<sup>12</sup>." The same article of the Constitution addresses the problem of mass-media and its duty "to provide correct information to the public."

As the citizens' access to public interest information is frequently ensured as a reply to a petition, the Constitution of Romania is also stipulating as a fundamental right of petition at Article 51. "Citizens have the right to address public authorities by petitions formulated only in the name of the signatories<sup>13</sup>." In this context, the representatives of the State cannot limit this right and are bound to answer to citizens' inquires. The exact text stipulates: "the exercise of the right of petition shall be exempt from tax<sup>14</sup>" and "the public authorities are

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<sup>10</sup> *Constitution of Romania*, Art. 31 (1).

<sup>11</sup> *Idem*, Art. 31 (2).

<sup>12</sup> *Ibidem*, Art. 31 (3).

<sup>13</sup> *Ibidem*, Art. 51 (1).

<sup>14</sup> *Ibidem*, Art. 51 (3).

bound to answer to petitions within the limits and under the conditions established by law<sup>15</sup>.”

Very important in a symbolic, but also legal sense of the words is the next fundamental right mentioned in the Constitution of Romania: the right of a person aggrieved by public authority. “Any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by failure of a public authority to solve his/her application within the lawful time limit, is entitled to the acknowledgement of his/her claimed right or legitimate interest, the annulment of the act and reparation of the damage<sup>16</sup>.”

Based on the above mentioned Constitutional articles, and also encouraged by a successful national NGO advocacy campaign to bring *Freedom of Information Act* into the Romanian legislation, the Romanian Parliament adopted the Law no. 544 regarding free access to public interest information in 2001<sup>17</sup>. Romanian FOIA has been inspired mostly by the American experience and was drafted by a joint working group made up of MPs and experienced civil society representatives. It is considered to be exceeding the minimum standards established by the European Union in the European Commission Directive no. 98/2003.

The *Law on Free Access to Information of Public Interest* allows for all persons<sup>18</sup> to have access to information that is „in the possession, regarding or generated by public institutions” (entities using public money and being active on Romanian soil)<sup>19</sup>. Exceptions from the free access are listed within article 12; the law makes clear that the protection of the classified information is the sole responsibility of those holding the information (a change for the best compared to the previous legislation regarding the State secrets); it also states that no information regarding a wrongdoing of a public authority or institution can be classified as “secret”<sup>20</sup>. The same law states the obligation of the public authorities and institutions concerning the release - ex officio or by request - of the public information, as well as the procedures and the deadlines for releasing such information: 10 days or 30 days for complex information<sup>21</sup>.

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<sup>15</sup> *Ibidem*, Art. 51 (4).

<sup>16</sup> *Ibidem*, Art. 52 (1).

<sup>17</sup> Published in the Official Gazette on October 23, 2001.

<sup>18</sup> An interesting reference is worth to be mentioned here regarding the concept of *person* used by the law, which includes citizens (as natural persons), public or private entities (as legal persons), but may also include foreign persons (natural and legal) and stateless persons.

<sup>19</sup> *Ibidem*, Art. 26 (2).

<sup>20</sup> *Ibidem*, Art. 12.

<sup>21</sup> *Ibidem*, Art. 7.

Releasing the information may also mean that the requester is directed towards another entity holding it. The public authorities and institutions are required to create special departments to deal with public information inquiries. An information request can be submitted in writing, orally or in electronic format. The petitioner has to pay, if the case, the costs for copying the requested documents, but no additional tax can be charged for public information<sup>22</sup>.

A special chapter is dedicated to the media and journalists' access to information. The authorities and the public institutions are required to create specialized structures for their media relations. The media outlets are subject to positive discrimination, as the deadline for the release of information to them is 24 hours, compared to 10 days for ordinary requests<sup>23</sup>.

Those who consider that their rights to freely access the information have been breached - either by denial of access or by failure of meeting the deadlines - can appeal the decision, by administrative complaint (to the superior of the employee who has denied the information), or to the Court. The Court can rule in favor of the disclosure of the information and can also sentence the public authority or institution to moral or patrimonial damages. Still the Court may also agree with the public authority's position, in which case the person/legal entity may further appeal the decision to the Court of Appeal, the resolution of the latter being definitive and past recall.

Positives aspects of the law analyzed by the Centre for Independent Journalism, a reputed NGO in Bucharest promoting professional and responsible media, are:

- "The broad definition of "public authority and institution". The definition is centered on "public money". Thus, any entity using public money (including State-owned companies, foundations receiving State grants, companies running activities involving public money) is subject to the FOIA.
- Stating that "person" (not the "citizen") is the beneficiary of the right to free access to information.
- Giving the law "teeth", introducing sanctions for those infringing the right to free access to information<sup>24</sup>."

At the same time, several weaknesses in the same legal text were identified:

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<sup>22</sup> *Ibidem*, Art. 9.

<sup>23</sup> *Ibidem*, Art. 8 (5).

<sup>24</sup> Avădani, Ioana, *Freedom of Information in Romania. The Role of NGOs*, available at [www.justiceinitiative.org](http://www.justiceinitiative.org), p.2.

- “There is no clear definition of what the “public interest“ means. Thus, exceptions from the free access to information do not provide for the internationally accepted prevalence of the public interest over any other reason for concealing information.
- The law does not provide for the “harm test”, for example it does not require for the threats to the national security to be actual and measurable, when evoked as reasons to conceal information.
- The law does provide only feeble protection for the *whistle blowers*<sup>25</sup>. The only provision in this respect is the one stipulating that no information concealing a wrongdoing or a law breach can be classified as secret<sup>26</sup>.”

Furthermore, besides FOIA, that applies to all public entities in Romania (including public utilities’ companies), the Parliament has special provisions regarding citizens’ access to specific information, stipulated in various legislative texts requiring the publicity of the sessions, votes etc. In this context, the transparency of parliamentary works is ensured, generally ex officio, by special regulations. The main representative body of the Romanian democracy, the bicameral Parliament <sup>27</sup>is firstly regulated in the Constitution of Romania. Following the Constitutional text, the two Chambers are organized based on their own Internal Standing Orders. Regarding the transparency issue, the Constitution is mentioning the publicity of parliamentary sessions. Article 68 stipulates “the sessions of both Chambers shall be public<sup>28</sup>”, but “the Chambers may decide that certain sessions will be secret<sup>29</sup>.”

Based on these provisions, the two Chambers have established their own Internal Standing Orders, as distinctive rule for the functioning of the respective Chamber and its specific structures. The plenary sessions are public, but in practice an important difference is made between the two Chambers at the Standing Committees’ level, as well as in what concerns individual vote

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<sup>25</sup> The *whistle blower* has been introduced in the Romanian legislation later than the free access to public information (through Law no. 571/2004) and so far provisions of the two legislative pieces have not been harmonized.

<sup>26</sup> *Ibidem*.

<sup>27</sup> Prior to the modifications of the Constitution in 2003, the two houses had identical responsibilities. After the 2003 referendum, a law still has to be approved by both houses, but in some matters one is “superior” to the other, being called “decision chamber” (“*cameră decizională*”). This eliminates the process of “negotiation” between the two houses, and keeps the Senate, 133 members as the upper house and the Chamber of Deputies, with 325 deputies, as the lower house. The Senate is decision chamber for foreign policy issues, the organization of the Justice as a State power and education. The Chamber of Deputies is decision chamber for all the other laws.

<sup>28</sup> *Constitution of Romania*, Art. 68 (1).

<sup>29</sup> *Ibidem*, Art 68 (2).

registration of MPs. Although not a formal rule, Internal Standing Orders of the two Chambers are amended each 4 years, after the investiture of the new Parliament.

Regarding the parliamentary sessions, the *Internal Standing Orders of the Chamber of Deputies* stipulate that: “the sessions of the Chamber of Deputies shall be public and broadcast online on the website, unless, at the request of the President or a parliamentary group and based on the vote cast by a majority of the present deputies, it is decided for certain meetings to be secret<sup>30</sup>.” Moreover, efforts are made to establish a special TV broadcasting channel for relying parliamentary plenum debates.

“The public sessions of the Chamber of Deputies may be attended by diplomats, representatives of the press, radio and television channels, as well as other guests, based on accreditations or invitations endorsed by the Secretary General of the Chamber, under the terms established by the Standing Bureaus. Citizens may attend the proceedings of the Chamber of Deputies based on individual passes distributed on request, following the order of receiving such requests, within the number of seats available in the lodges designated for the public<sup>31</sup>.” Although same administrative problems occurred in providing access to the plenary session meetings, it never happened for a solicitant’s access in the Parliament to be denied. Several incidents occurred as some visitors have occupied MPs’ seats in standing committees’ rooms instead of those assigned in the plenary hall, yet this never lead to ignoring/banning citizens’ access in the Parliament. Practice has shown that access is easier for an institutional actor’s representative (NGO, media) than for a regular citizen, who should normally wait for someone to accompany him/her to the designated seat(s). This regulation is exactly the same for the Senate<sup>32</sup>. The weekly sessions’ agenda is public as well and is posted on the websites of the two Chambers<sup>33</sup>. Still, in practice, order of the bills on debate changes frequently.

Furthermore the sessions of the Chamber shall be recorded and archived by the secretariat. “The verbatim reports shall be posted on the website of the Chamber of Deputies and published in the Official Gazette of Romania, Part II, within ten days<sup>34</sup>.”

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<sup>30</sup> *Regulations of the Chamber of Deputies*, <http://www.cdep.ro/pls/dic/site.page?id=240>, Art. 139.

<sup>31</sup> *Ibidem*, Art. 140 (1).

<sup>32</sup> *Regulations of the Senate*, <http://www.senat.ro/PaginaPrincipala.aspx?tdID=14&divID=2&b=0&adr=%2fpagini%2fsenatul%2fregulamentul+senatului+2006.htm>, Art. 116, 117 (2).

<sup>33</sup> [www.cdep.ro](http://www.cdep.ro) and [www.senat.ro](http://www.senat.ro)

<sup>34</sup> *Regulations of the Chamber of Deputies*, Art. 153 (1), (2).

During plenary sessions, as a rule, the vote shall be open. The open vote shall be cast by electronic means<sup>35</sup>. "If the vote by electronic means is open, it should be posted on the website of the Chamber of Deputies/Senate for each member of the Parliament<sup>36</sup>." In this way the vote is displayed nominally, and any person can track the vote of each deputy/senator. As a rule, the vote is secret each time it is cast on a person: election, nomination and demission etc. The confidence and non-confidence vote for the Government and the recall are as well secret, as a rule. More recently, some of the Steering Committees in the Deputies Chamber have started to use electronic display of their work: the Committee for Budget, Finance, and Banks, the Juridical Committee and the Committee for Public Administration currently track and publish the individual votes of MPs on the Standing Committees' reports on debated bills. The sessions of these three Committees are video recorded and posted on the web page of the Chamber of Deputy at [www.cdep.ro/calendar](http://www.cdep.ro/calendar). The aim is to further expand these practices to all committees upon logistical arrangements without which such attempts are impossible.

Debates of the two Chambers' Standing Bureaus are recorded in minutes and posted on the websites<sup>37</sup>, but as an unwritten rule the public cannot attend these sittings. On the other hand "the sittings of the Chamber of Deputies Standing Committees shall be open" and their minutes are published in the Official Gazette of Romania, Part II<sup>38</sup>. "A summary of the Standing Bureau's meetings and of the Committees' meetings shall be posted on the website of the Chamber of Deputies within ten days<sup>39</sup>." From practice, this is not always the case for the Committees' meetings records. Still, if an interested person asks for copies of these documents using a FOI request, she/he usually receives them.

Similar to the *Regulations of the Chamber of Deputies*, the ones of the Senate stipulate the rule of casting the open vote by electronic means. Although the regulations' text is rather limitative - stipulating that the results of the open electronic vote can be released on request of any parliamentary group, the actual practice is that of registering and displaying each senator's vote on bills on the website of the Senate. Political will in this case proved to be as important as the text of the law itself. In fact, in Romania, political parties exercise a very important role in advancing reforms in this field.

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<sup>35</sup> *Ibidem*, Art. 123.

<sup>36</sup> *Ibidem*, Art. 124.

<sup>37</sup> *Ibidem*, Art. 31 (3).

<sup>38</sup> *Ibidem*, Art. 53, 58.

<sup>39</sup> *Ibidem*, Art. 53 (3).



*The Regulations of the Joint Sessions of the Chamber of Deputies and Senate* is not mentioning that all electronic open votes are posted on the Internet, but this is usually the case on the website of the Chamber of Deputies. Still, the debates of the Joint Committees are not public, according to the Regulations<sup>40</sup>. Yet such sittings are rather an exception than the rule.

According to the Senate's Regulations, the Standing Bureau is posting on the website only its most important decisions<sup>41</sup>. Both Chambers' Standing Bureaus post their sittings' minutes on the websites and the votes of the Bureaus' members are also nominally registered<sup>42</sup>.

As far as Steering Committee's debates are concerned, interested citizens/NGOs can attend the committees' sittings if they priory ask for permission from the President of the respective Committee and receive a formal approval. During the sittings, guests may not take the floor unless invited to by the President; therefore it is advisable for those interested to write down any comment/amendment to the bills discussed within the respective session and to distribute handouts to Committee's members before the meeting.

In what concerns the access to the plenary sittings, the Chamber of Deputies has recently institutionalized an accreditation system for NGOs, based on nominal passes for members of organizations who usually attend parliamentary works.

Each parliamentary Chamber has special structures in charge with providing free access to information for the civil society: the *Public Information Office* for the Senate and the *Department for Public Information and Liaison with the Civil Society* for the Chamber of Deputies.

The websites of the two Chambers are handy tools to use for people searching for general information about the Parliament, as they display *ex officio* several categories of information, such as: contact details for each MP, disclosure of assets and interests, status of bills, individual votes of MPs etc. The two Chambers publish their legislative reports at the end of each legislative session, including statistic data on the legislative activity of each chamber as a whole, mentioning the number of laws, the number of initiatives and their initiator, the

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<sup>40</sup> *The Regulations of the Joint Sittings of the Chamber of Deputies and Senate*, <http://www.cdep.ro/pls/dic/site.page?id=748>, Art. 11.

<sup>41</sup> *Regulations of the Senate*, Art. 36.

<sup>42</sup> *Ibidem*, Art 38 (2).

Committees' activity report: number of sessions, number of amended laws etc. The instrument is very useful to statistically examine the activity of the Parliament as an institution, more than of the MPs. Still, if an organization is interested in actually getting involved in the legislative process, it should seriously consider a thorough documentation including attendance at plenum and steering committees' sittings, individual or group advocacy campaigns etc.

The Law on Deputies' and Senators' Statute (law no. 96/2006) also introduces - with a general character - the principle of *transparency*, as it stipulates in article 11 that "deputies and senators should prove transparency in their parliamentary activity", while the same legislative text states that they "have the obligation of maintaining a permanent dialogue with citizens regarding problems that the latter are interested in and which lie in assuming and exercising the parliamentary mandate". Yet, although transparency and participation are recognized as fundamental principles of parliamentary activity, there is no coercive means to sanction those MPs who do not follow the principles, thus leaving the law empty of substance when speaking about transparency of parliamentary activity.

Furthermore, anticipating some of the aspects that are to be further discussed when referring to the Romanian parliamentary transparency and corresponding shortcomings, the Law on Deputies' and Senators' Statute is the main legislative text including a separate chapter on MPs' mandate performance in constituency offices. While most of the readers would expect to find here relevant information on the duties/responsibilities of Romanian MPs for organizing specific activities within local offices, meetings with citizens etc., the chapter only points to pecuniary rights MPs are entitled to (lump sums allocated for constituency offices, per diem, travel expenditures) and there is no evidence on what should MPs "perform" in exchange for this public money spent on constituency offices. The issue of parliamentary expenditures is in fact a great test of transparency that IPP has undertaken on a periodic basis, and it points out to the actual level of transparency of Romanian Chamber of Deputies/Senate<sup>43</sup>.

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<sup>43</sup> Each year, IPP addresses FOIA inquiries to the Chamber of Deputies and the Senate, asking the two to provide detailed information on public expenditures engaged with the activity of each deputy/senator on a whole range of expenses. Most of the times, the Institute ends up in court with these inquiries, as answers provided are either incomplete and/or illegible or the two Public Information Offices deliberately refuse access to some categories of information (e.g. MPs indemnities are not disclosed, as they are assimilated with salaries which have been declared *personal data* by the Constitutional Court in 2007).

Subsidiary to the first categories of legislative provisions regulating the free access to information - the Constitution, FOIA and Internal Standing Orders of the Parliamentary Chambers, it is equally important to address several other pieces of legislation that indirectly fall under the incidence of the transparency issue.

A still problematic issue when enforcing free access to information is connecting to often abusive interpretation of the law on personal data protection. Although they were historically regulated almost simultaneously (in 2001), Law no. 544/2001 and Law no. 677/2001 for protecting persons against processing personal data and free movement of this data, are still far from being harmonized, theoretically but mostly in practice. This makes it a challenge for both the person asking for certain types of information, as well as for the civil servant responsible with providing this information - as both parties may have opposite interpretations of the same legal text. For example, if one would ask for the presence sheets from the Romanian Parliament, he or she would most likely be denied access to these documents based on the motivation that these lists include signatures of the deputies/senators, and these are considered personal data. The list of such examples may go on endlessly. The Law on personal data protection tends to be places on a higher position compared to the law on free access to public interest information, and this is happening only because of general mentality of institutions searching for hiding as much as possible from peoples' scrutiny.

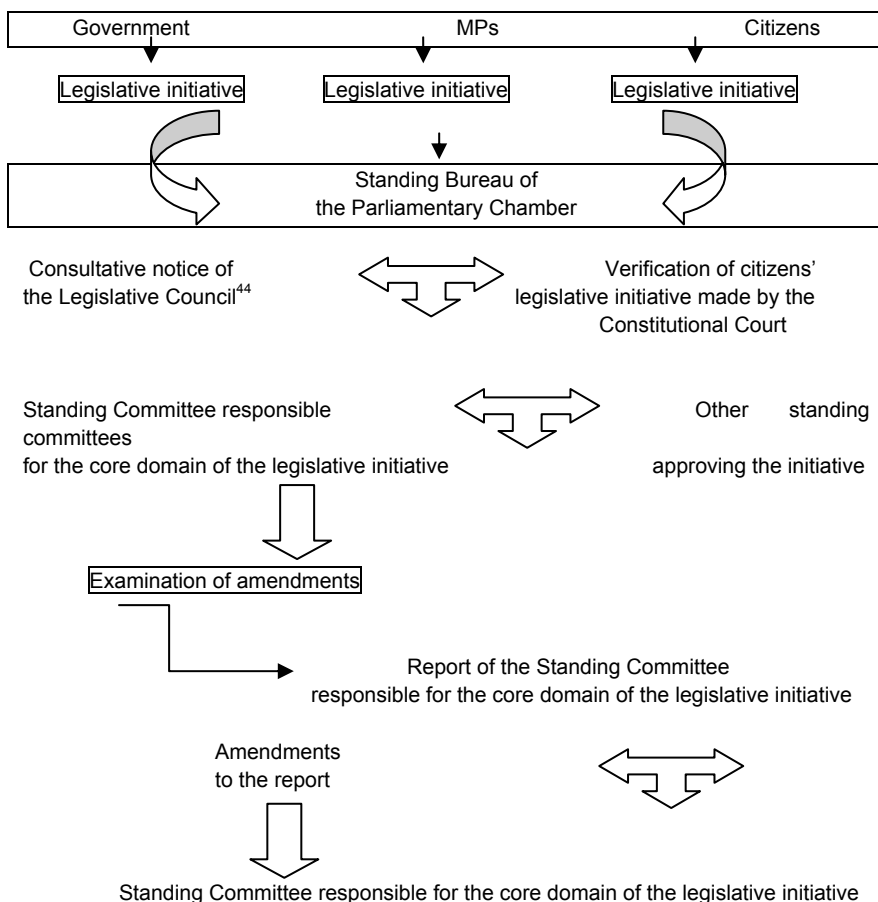
Further on, Law no. 182/2002 protecting classified information may also be subject to arbitrary/abusive interpretation when interacting with a request of free access to information. Although the law clearly states that "no provision of the present law [n.a. law no. 182/2002] may be interpreted as limiting access to public interest information or ignoring the Constitution, the Declaration of Human Rights, of covenants or other treaties to which Romania is a part of, regarding the right to get and disseminate information." The vague definition of *classified information* leaves place for personal interpretation: "information, data or documents of interest for the national security which, because of importance and consequences they may generate as a result of unauthorized revealing or dissemination, they need to be protected". Unfortunately, in practice one may quite often face situations in which intemperate zealous civil servant exacerbate the "consequences" of revealing pure public interest information.

The brief overview of the main legislative acts regulating free access to public information and its limits in Romania show - as stated from the very beginning - that theory is far beyond practice, as main problems usually occur with law enforcement. Undemocratic interpretation of the laws at the level of public

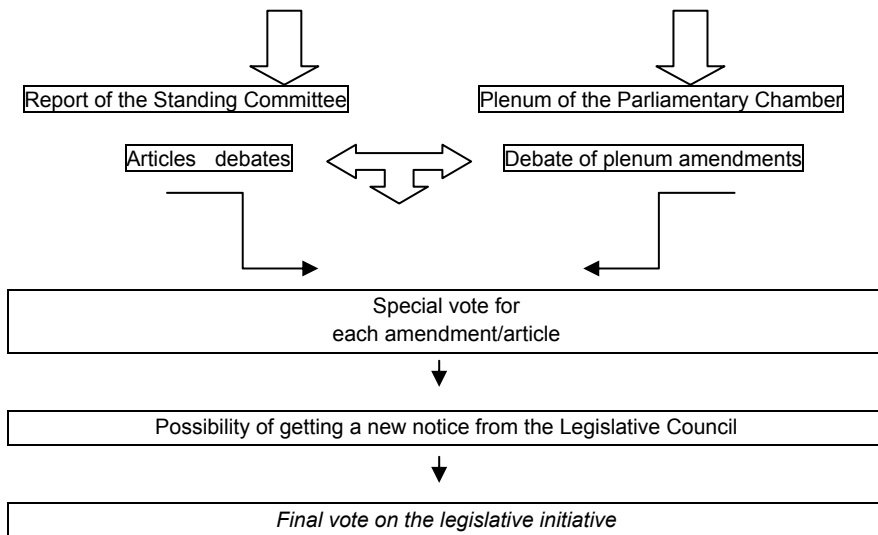
institutions has roots in the mentality of these institutions' leaders that have not learnt yet that their positions owe significantly to citizens' vote and/or trust.

### *The legislative process in Romania*

Before an idea/a solution to a problem become a law, it passes several stages which are fundamental to be understood by anyone seeking for transparency of the legislative process. The diagram below shows the most important phases of how a bill becomes a law in Romania.



<sup>44</sup> The Legislative Council is the Parliament's specialized consultative body, which is responsible with approving normative acts in order to systematize, unify and coordinate entire legislation (Art. 79 of the Romanian Constitution).



The Constitution theoretically provides general conditions for Romanian citizens to advance a bill to the Parliament: the right to issue a legislative initiative belongs to at least 100.000 citizens entitled to vote, whom should originate is at least one quarter of Romania's counties (that is from at least 10 counties) while a minimum number of 5,000 signatures supporting the initiative shall be registered in each of these counties, plus the capital city. Citizens cannot issue legislative initiatives on fiscal matters, international policies, amnesty or pardon.

A specific law (Law no. 189/1999 regarding exercise of citizens' legislative initiative) details further on the specific procedures to be followed by the 100,000 citizens in order to pass a law. Paradoxically, unlike the precedent laws which provide only feeble sanctions for public authorities infringing the right to information/to provide participatory decision making, the present law clearly stipulates penalties for what it is called "blackmail", that is coercing a person or deluding him/her against his/her will to sign the supporting list for the legislative initiative represents a crime and the author may be sentenced to prison from 5 months to 6 years. Under such conditions, it is not astonishing that in the post-communist recent history, we have never had a law originating is citizens' legislative initiative in Romania.

Based on the all above mentioned aspects, we may conclude that the Romanian legal framework regulating transparency and free access to information is theoretically a proper one, yet when it comes to enforcement things may change. Concretely, main deficiencies pointing out to the need to further pressure on decision-makers for improving *real* access to public interest information are:

- Lack of regulation with respect to the parliamentary constituency offices and consequently lack of provisions regarding access to information at this level;
- Cross-interpretation of laws regarding free access to public interest information, personal data protection and classified information puts on an undue inferior position the law no. 544/2001 (on free access to information). At this point, we have major problems especially when dealing with issues that MPs are hypersensitive to, such as presence, money spent etc. In this context, the law is practically endangered by politicians' attitude of protecting their image by all means;
- The same problems of law interpretation are observed at the level of public servants responsible with providing free access to information. Politicianist arguments described above sometimes lead to intemperate zeal of executive staff in charge with providing information, who sometimes deny access of their own free will, considering that they are protecting the leader of the institution in this way.

In conclusion, although a solid legislative framework is in place in Romania, we still have problems with arbitrary/non-uniform interpretation of this legislation especially when parliamentary activities are at stake, secondary variable factors being in fact most persuasive, such as political conjecture or the requester's capacity of bringing the topic on media's agenda. Thus stability and objectivity in what concerns transparency and free access to information are not yet assumed as an internal value of the Romanian legislative, but rather perceived as an extra-weight by both MPs and civil servants in the responsible departments.



### ***III. Relevant stakeholders' assessment on the transparency of the Romanian Parliament***

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As we already stressed, the legal framework is a necessary condition, but not a sufficient one to ensure the transparency, accountability and civic participation in relation to the parliamentary activity. The actual practice in accessing public information and the challenges to this respect are equally important in our analysis. Thus, two more sets of indicators were included in the assessment on parliamentary openness: the relevant stakeholders' experiences and opinions on the actual practice of transparency at the level of the Parliament. In July and August, 2008, IPP team was conducting interviews at the level of the civil society carrying out a poll aimed at assessing the perception dimension, as well as the practical exercise in accessing information from the national Parliament.

Relevant interviewed stakeholders' representatives were: NGOs, trade-unions, business associations and mass-media. Even if these institutions'/organizations' perceptions show quite different approaches to the Parliament and indicate a medium or high interest for the parliamentary activity, their reply rate was different. For more accurate results, we have also emphasized the differences between national and local entities, as there are numerous conditionalities differentiating between the two levels.

We sent the questionnaire to 35 NGOs, 10 trade unions, 10 business associations, 10 central mass-media representatives and 25 local journalists, and we have collected 20 replies from NGOs, 4 from trade unions, 4 from business associations and 13 from mass-media. Therefore figures and analysis presented below represent an indication of the civil society's understanding of transparency of the Parliament than a relevant, statistically representative evaluation. We can explain the low reply rate if we corroborate the results with the interviews outcomes. The representative of the Civil Society Development Foundation (FDSC) and of the Romanian Centre of Assistance for NGOs (CENTRAS), for example, told us that the interest of NGOs for the Parliament is decreasing, their attention being more concentrated on central bodies and local governments. Furthermore, FDSC legal specialist mentioned that was easier and more efficient to advocate, as NGO, at the level of the ministry, as it generally initiates most of the bills, whereas the parliamentary rules proved that would not provide for authentic consultation (as described in the section above). For FDSC, the parliamentary structure is too complex and heavy enough to allow an effective involvement of civil society in the legislative making process.



Out of the civil society sector, nongovernmental organizations were more responsive than trade-unions or business associations, a reasonable explanation being that NGOs are used with such consultative process and therefore the rate of response at this level was not surprising. Still, trade unions and business associations as part of the Economic and Social Council<sup>45</sup> do have access to constant consultation mechanisms, as these are compulsory for the Parliament. In practice, this is not always the case, but the tool formally exists and could be used for exercising pressure on the Parliament. Overestimated on these mechanisms, business associations acknowledged that influences have a greater impact upon the Government.

Except this form of civic pressure, other possibility of transforming their professional and economical interests into laws is through association with a political party; this has become a very popular strategy among the trade unions' leaders. Their needs are either supported by a party within the Parliament, or directly represented by one of the trade-unions' leaders actually elected as MP in the Parliament. It is a common practice in Romania for the business associations' leaders to become party members, thus gaining the possibility of influencing the political process from the inside.

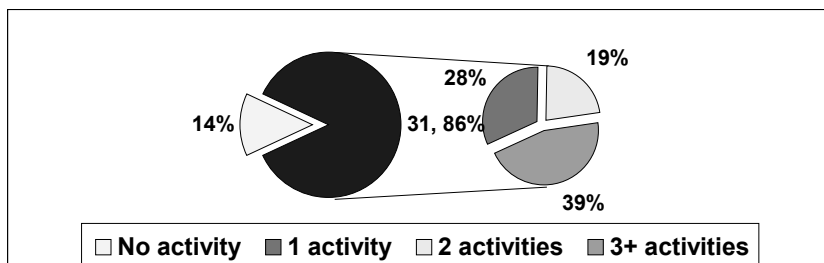
With regards to the media included in the analysis, it seems that their interest is higher with regards to the MPs' performances as individuals, than to the institutional mechanisms of transparency in their whole.

At the level of questioned stakeholders, 14% of the respondents said they had no experience at all in working with the Parliament. Only 39% among all respondents listed three or more than three activities that they implemented in connection with the Parliament or involving MPs. Other 30% of the stakeholders said that they implemented two major activities related to the institution of Parliament or by involving MPs.

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<sup>45</sup> The Economic and Social Council is a public institution of national interest, autonomous, constituted with the purpose of realizing a national social dialogue, social stability and peace, between business associations, trade unions and Government. The Romanian Constitution defines ESC as a consultative body of the Romanian Parliament for some fields of reference such as: setting up social and economic strategies and policies, clearing up realm conflicts between social partners and promoting and developing social dialogue and solidarity.

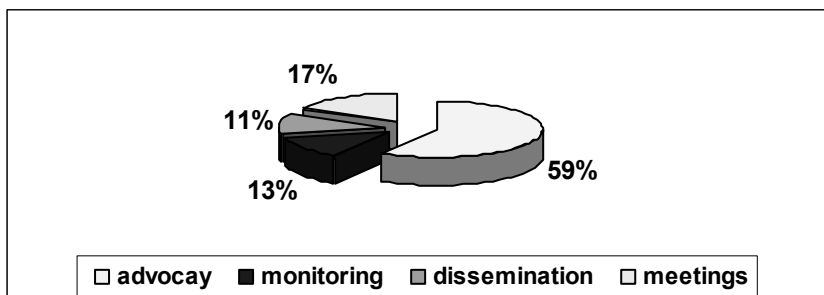
### *Relevant stakeholders experience connected to the Parliamentary activity*



With the exception of the media whose activity is very well defined, the rest of the respondents claimed that they were mostly involved in advocacy campaigns. In order to analyze the projects/initiatives that respondents mentioned as having connection with parliamentary activity, we categorized them into four types such as: advocacy, monitoring, dissemination of information about parliamentary issues/MPs or other common activities involving MPs (e.g. participation to common events).

Thus, we included 63 types of activities with incidence on parliamentary works that were developed in Romania in the last three years. More than half of them were advocacy activities in a broad sense (60%), while the other three types of activities are balanced in their number: monitoring the parliamentary activity, 13%, dissemination of information about the Parliament, 14%, and public events with MPs (such as conferences, debates, round tables etc.), 18%. Respondents indirectly admitted that the Parliament has a certain influence in the society and that influencing at their turn the deliberative process is important.

### *Types of stakeholders' activities connected to the parliamentary activity*



The majority of the NGOs' projects/activities include advocacy approaches with regards to various bills directly connected to their activities' domains. One example in that respect is the environmental NGO, *Mare Nostrum*, from Constanța county (near the Black Sea). The organization attended Standing Committees' sessions when its' members were debating the administration of the Coast Area. Once the law was adopted, the same association organized meetings with MPs from Constanța country to advocate for faster implementation of the respective law.

*Pentru Voi (For You)* Foundation in Timisoara - a reputed NGO fighting for protecting rights of people with mental disabilities and APADOR - CH (the Association for the Protection of Human Rights - Helsinki Committee) undertook other advocacy activities. They sent their legislative amendments' proposals having direct incidence in their field of expertise to all the MPs in the Parliament. As they were waiting for their answers, this proved to be insufficient, the project manager of APADOR-CH admitting that it could have been efficient only if combined with individually contacting MPs that are well known as being particularly interested in the subject. Personal contacts count a lot in advocacy campaigns at the level of the Romanian Parliament.

From the FDSC representatives' point of view, the Romanian civil society seems not to be able yet, in terms of financial and experienced human resources, to identify their legal needs and to promote them at the right time and with appropriate approaches. FDSC evoked the experience of their projects in 2007, aiming to bring NGOs into the Parliament to attend the plenary sessions. They have had very few feedbacks from NGOs, and almost no reply from organizations which had been never working with MPs before.

Still, examples of successful advocacy campaigns in the recent history (including here that of the Institute for Public Policy for amending the Internal Standing Orders of the two parliamentary chambers in order to have the individual votes of MPs registered and displayed on the website) show that Romanian civil society sector still struggles to make its voice heard in the Parliament. This while not always the necessary conditions exist to not favor a strong involvement of NGOs in the decision - making process (as compared to the business associations or trade unions which use different pressure/lobbying mechanisms).

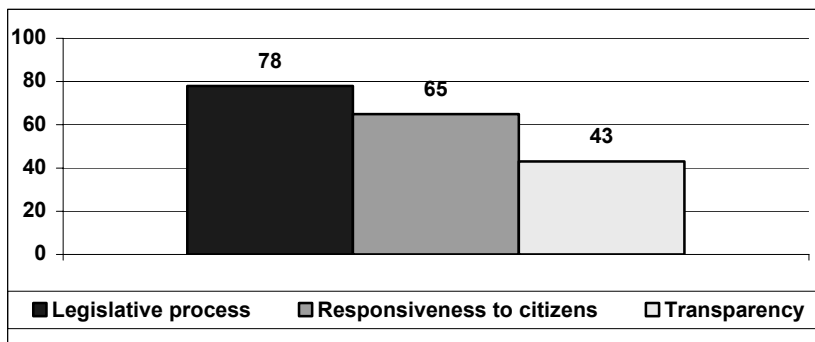
When asked to describe the interest for the Parliament's functions, most respondents (NGOs, trade unions, business associations and mass-media representatives) said that they were rather interested in (decreasing order of responses is relevant):

- the legislative process
- the Parliament and MPs responsiveness to the citizens
- the Parliament's transparency.

Most respondents said that their major interest in the parliamentary activity is directly related to the legislative process. Also the responsiveness of the Parliament in general and of the MPs in particular also play a very important role in respondents' perception vis-à-vis the Parliament.

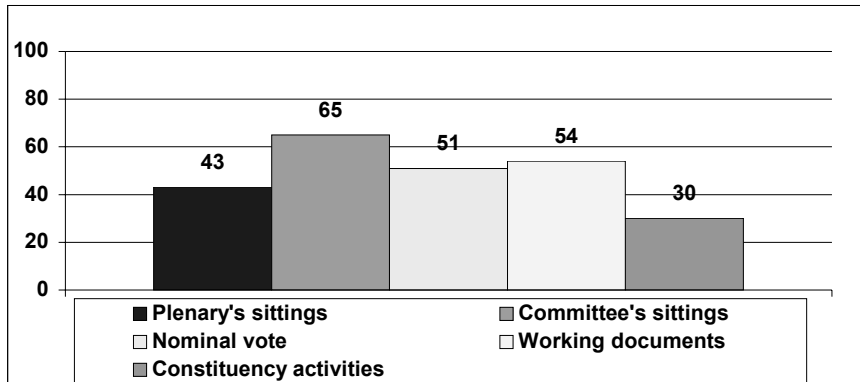
As a natural addition, stakeholders are primarily interested in the legislative process related to their field. As expected, the stakeholders working in the political field, monitoring public institutions and informing citizens about the public institutions' activity are more interested in transparency mechanisms in general, as compared to their counterparts.

*Interest of the stakeholders in the functions of the Parliament and how to tackle problems of accessing information from the Parliament*



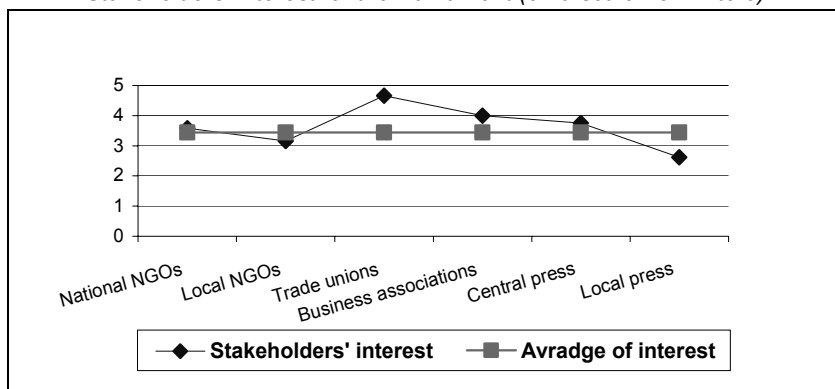
Asked to identify the level of the deliberative process that raise much of their interest, the majority of stakeholders mentioned they are highly interested in the *Standing Committees' sessions*. In addition to it, they are also interested in the parliamentary documents, (e.g. Committees' minutes, Committees' agendas etc), the nominal voting list of the members of the two Chambers, the plenary sessions' debates and the MPs activity in their constituencies.

### Interest of the stakeholders in the activities of the Parliament



The average score of the stakeholders' interest for the Parliament's work in Romania is 3,44, on a scale from 1 to 5, where 1 means *no interest* and 5 means the *highest* interest of the organization. We can examine below the differences between different categories of stakeholders, based on their own evaluations of the level of interest, taking also into consideration the limitation of values attached to such index, described in the *Methodology* section above.

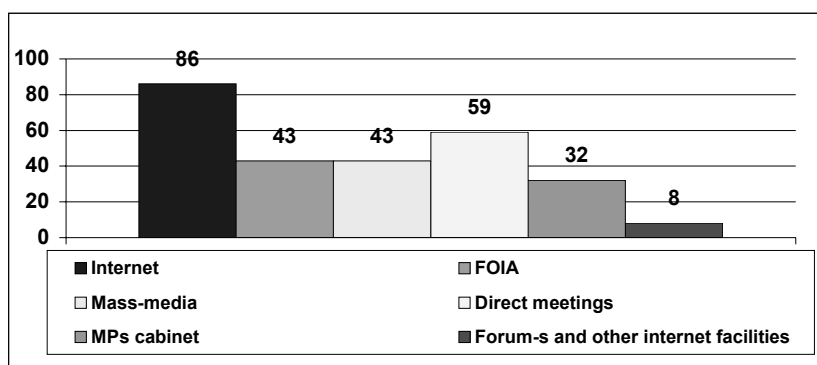
### Stakeholders' interest for the Parliament (on a scale from 1 to 5)



Questioned about the mechanisms that they know and use the most for accessing information from or about the Parliament and its members, almost all stakeholders mentioned the Internet websites of the two Chambers of the Parliament (80%), while another vast majority (60%) declared they accessed information by direct contacts with MPs. Our interviews' results show the organizations' leaders prefer direct and informal contact with MPs rather than

an institutional approach, such as by using FOIA, whenever targeting specific goals. The situation is even more accentuated at the level of the media. Journalists are unsatisfied with the institutional reaction in formally delivering answers to their questions. They claimed that they might lose the deadline for submitting articles if not approaching the MPs directly. Also, the information collected through rather informal means (“sources”) seems sometimes more relevant to base a story upon than in the case of data delivered via FOIA answers.

*The instruments used to achieve public information from Parliament*

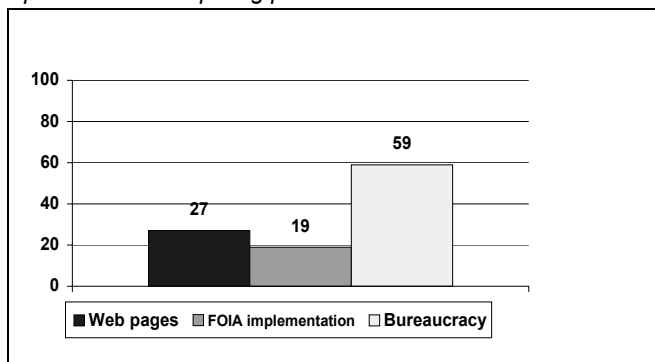


On the other hand, the respondents mentioned impediments in acquiring public information from the Parliament. Often accessed as a source of credible information, as we can see from the precedent statistics, access to the web pages of the two Chambers is sometimes problematic. Comparing the two Chambers, accessing information seems to be very difficult at the level of the Senate. Information is not up-dated in real time and very often it proves to be too complicated to find the needed information (information is sketchy; therefore a significant additional effort is needed for putting together a coherent analysis based on it).

The biggest impediment stakeholders faced in their communication with the Parliament is the bureaucracy. The weekly agenda of proposed bills to enter parliamentary debates is not stable, but constantly changed exclusively by political reasons. There is no settled and publicly announced working agenda for the constituency MPs offices; the civil servants and administrative rules of the Parliament are less accessible than in the rest of the central administration. Evoking the importance of the Parliament, the security imperative and the need for quietness for the activity, Parliament representatives claim that it is difficult

for journalists to take part in the meetings, even if theoretically these are open to the public.

*Impediments in acquiring public information from the Parliament*



Some of the stakeholders drafted FOIA requests and therefore hold an expertise with which to claim that currently the performance of the public relations offices is low (especially that of the Senate). Just 35% of the respondents said they issued FOIA requests to the Parliament, 15% of those not getting any answer, 69% getting incomplete replies and only 16% of the petitioners receiving satisfactory information. Nevertheless, the Service for Public Information of the Chamber of Deputies mentioned in 2006 that 20% of the petitions they received on FOIA were from NGOs<sup>46</sup>. This situation evolved since then: in the first six months of 2008, 13% of the petitions on FOIA to the Chamber of Deputies were signed by NGOs representatives, whereas in the case of the Senate for the same period - nearly 30% of the total FOIA requests were addressed by NGOs<sup>47</sup>.

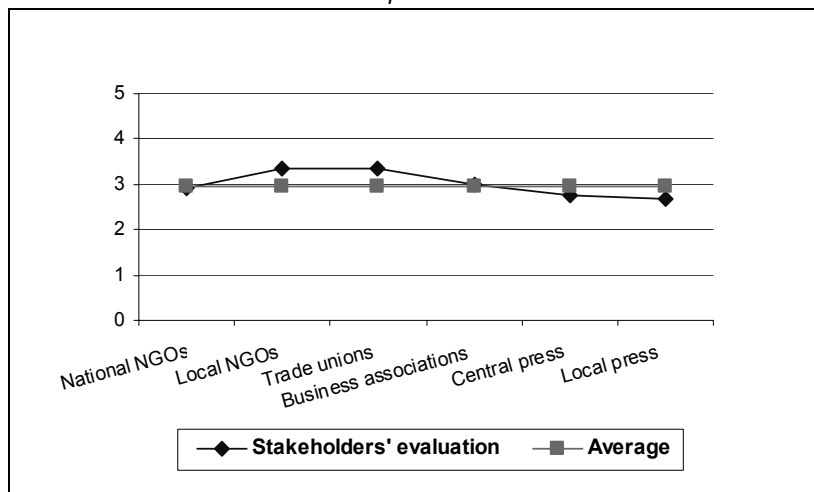
Based on a rough average calculation of all scores attached to each research dimension (interest for parliamentary functions/activities, access to parliamentary works, impediments in acquiring public interest information etc.), the general openness score of the Romanian Parliament is of 2.97 (on a scale from 1 to 5). Again, this figure should be considered as having limited representativeness due to the sample of respondents which cannot be considered as sociologically representative at national level; hereby below may

<sup>46</sup> The annual report of the Service for Public Information, The Chamber of the Deputies, [http://www.cdep.ro/pdfs/raport2006\\_aip.pdf](http://www.cdep.ro/pdfs/raport2006_aip.pdf), p. 7.

<sup>47</sup> The annual report of the Office for Public Information, <http://www.senat.ro/PaginaPrincipala.aspx?tdID=75&divID=36&b=0&adr=%2fpagini%2fRelatii+cu+publicul%2fBiroul+de+relatii+cu+publicul%2fRaport+acces+la+inf+publice+%c3%aen+2007.pdf>, p.5.

be consulted differences in perception between categories of respondents (local NGOs and trade unions usually tend to consider the Parliament more “open” as compared to central - capital based NGOs and media).

*The score of the openness of the Parliament*



All questioned non-governmental organizations located outside the capital city and the representatives of local media were stressing out the importance of implementing a legal mechanism to regulate the activity of the MPs in constituencies. Most of them complained about not being able to track the main categories of MPs' activities as there are no clear regulations with regards to types of activities an MP is supposed in constituencies. In some cases, not even the schedule of meetings with the citizens is publically announced, therefore making it almost impossible for any interested person/organization to communicate with their MP on a frequent basis.

Media representatives were also stressing out that they can hardly make use of FOIA, as they do not receive official information as promptly as they need it. Therefore, although not always the most reliable, unofficial sources of information - particularly for sensitive topics such as suspicions of conflict of interests/corruption, mismanagement of public money etc. - are faster as compared to the legal means.

Strategic litigation in case of denying access to public information is not a common practice for the Romanian civil society at this point. Although there are



few large organizations in Bucharest<sup>48</sup> bringing different public authorities to Court in any circumstance that they/their beneficiaries are denied the right to freely access public interest information, this practice is rather an exception than the rule, at this point. The very few lawsuits concern various aspects related to spending of public resources for the MPs activities, information about MPs attendance at plenary sittings etc.

If we were to corroborate the sample results of the research conducted within the context of the present project with large empirical evidences<sup>49</sup> provided by public opinion polls, we would see a similar trend of continuous dissatisfaction and erosion of public trust in the fundamental institution that is the Parliament. In 2006, 82% of the citizens had little or no confidence at all in the Parliament. According to a similar poll conducted in January 2008 the Romanian institution with the lowest level of credibility was the Parliament, as *88% of the citizens mentioned that they had little or no confidence at all in the Parliament*<sup>50</sup>.

In this context we consider the general interest of the citizens for the Parliament and their trust as an important indicator, not only in order to assess the civil society democratic awareness, but also for evaluating the openness of the Parliament. We believe that transparency and accountability of the individual MPs and of the institution represent the solution for treating the problem of mistrust of the citizens in this institution.

Concluding on the exercise of evaluating Romanian civil society representatives' perception on transparency, we may State that same problems described under the previous chapter are similar in practice, in the sense that, although formally regulated, access to public information related to parliamentary activity is difficult and liable to conjectural conditions. Most often it is more efficient to directly contact MPs, even though information collected via this channel can't be always hold as official, which demonstrates that transparency mechanisms are not entirely institutionalized and still rely on too many external factors. The tendency to approach a rather informal collaboration with MPs is acknowledged also by business associations, which shows the same conclusion that formal mechanisms are not providing the expected results.

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<sup>48</sup> Among which the Institute for Public Policy (IPP), which holds the most extensive experience in practicing strategic litigation against public authorities/institutions breaching the legal provisions guaranteeing free access to public interest information.

<sup>49</sup> *Public Opinion Barometers* published by Romanian SOROS Foundation, 2007.

<sup>50</sup> *Ibidem*.

At the same time, civil society does perceive the Parliament/MPs as being important actors in the public sphere, therefore monitoring the performance of the elected officials seems to be an area of interest for most non-governmental organizations. Yet, due to above mentioned local conditions, civic education and engagement for learning about proper mechanisms of getting involved in the parliamentary process are rather low and cooperation is punctual and conjectural.

At a general level, the impact of democracy on increasing the quality of cooperation between civil society and the legislative is quite weak; civil society is still “at war” with the Parliament (most initiatives/media outlets show the negative aspects of parliamentary activity), indicating the fact that the Parliament has not gained yet the role of public debate catalysis, as it should have in an ideal democracy.



#### ***IV. Conclusions and recommendations for a more open Romanian Parliament***

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Reviewing the main aspects analyzed above with regards to the legislative and institutional framework regulating transparency of the legislative in Romania, as well as perceived “openness” at the level of Romanian civil society, we may generally appreciate that continuous efforts are further needed for improving especially *the practice* of transparent disclosure of information from and about the Parliament.

While at a general level is it quite obvious that Romanian officials have formally assumed to guarantee unrestricted access to information, by explicitly regulating it in several legislative acts - including here the fundamental law (the Constitution), the true challenges appear when it comes to enforcing all these regulation. Several deficiencies were signaled both by civil society representatives and could have been deterred from author’s own experiences, such as: abusive/arbitrary interpretations of some information as being *personal data* (such as signatures of MPs on presence sheets in the Parliament) or *classified information* (e.g. the job description of one of the Ministry of Interior and Administrative Reform’s councilors in charge with...transparency), excessive bureaucracy and deliberate tergiversation in providing information on request, lack of real consultation between MPs and the civil society in the decision making process etc. To all these problems, we envisage a general solution which could be synthetically encompassed in the need to build continuous civic pressure onto the legislative process as a *checks and balances* democratic mechanism which is fundamental for concretizing concepts such as “transparency” and “accountability”. We do hope that, with the change of the electoral system, things will start evolving in that direction.

Secondly, a whole list of problems/proposed solutions may be further taken into discussion for the particular case of Romania, but also for other countries in the region where serious efforts focus on making the Parliament more transparent and accessible to citizens. Out of this list, we would only mention here some of the most important concerns that IPP and Romanian civil society in general shall further pursue for the above stated objective:

- The need for a more coherent, clear regulation of aspects regarding MPs duties and specific activities in constituencies (moreover in the context of the new electoral system which practically bounds the MP to his/her constituency);

- The fundamental importance of institutionalizing accountability mechanisms that shall prevent negative phenomenon such as chronic absenteeism: proper sanctions should be imposed, as a rule, to all those members of the Parliament who miss parliamentary sittings or don't care to express their vote on a frequent basis and access to such information is vital for an efficient combat against these malpractices.
- Access to information related to public money expenditures is a general problem: moreover in the case of the Parliament, which should act as a best practice example for all other public institutions and authorities, there is a strong call for publicizing all information related to parliamentary expenses on the website of the two chambers, in order for any taxpayer to be able to see how his/her money are spent by our elected representatives.
- The need for *ex officio* publication on the web pages of the Parliament and in general, of all public institutions/authorities, of as much public interest information as possible, in order to ease citizens access to such information and to avoid perceiving unreasonable taxes for copying documents. The more inquiries are submitted with regards to one issue or another, the faster should be the institution in displaying that information *ex officio* for a further similar request.
- Electronic means for voting should be used as a rule for all structures of the Parliament, including the Steering Committees, in order for citizens to be able to track the entire process of legislation, from the bill to the law adopted by the plenum.
- Institutionalizing functional consultation mechanisms at the level of the Romanian Parliament (based on the principles of the *sunshine law*) which shall allow for interested groups/citizens to express their opinions, concerns etc. *before* the law is adopted. There are numerous examples of laws being passed today in Romania without any *ex ante* impact assessment, which are not only unpopular, but raise serious problems when enforced (e.g. the recent example on an "electoral charity" law increasing teachers' salaries with amounts exceeding the economy's potential).

The list of punctual interventions may continue, yet the core point of this initiative is that there is a constant need of involvement of all civil society actors in order to "move" institutions and practices which tend to postpone reform for

an indefinite term. While a transparent legislative body is a facet of the democracy coin, the other one should be represented by a participatory civil society. We can “open” the Parliament through several instruments, what is important is to have the conscience that such endeavor should make us an integrating, and not an auxiliary part of the decision making process.









## ***I. Argument***

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There is a logic and practical relationship between the good governance and the citizenship. This is due to the fact that the citizens informed and educated in the spirit of democratic values contribute directly and indirectly to the increase of the public authorities' responsibilities in the society. A primary condition for such an interaction is determined by the transparency of the decisional act, by the manner in which the concerns of the community at local, regional or national level are identified and taken into consideration, thus, being ensured the premises for the dialogue between the society and the State. Starting only with this moment the citizens and the decisional actors can communicate in an intelligible and efficient manner upon important issues regarding the development of a society, under the condition wherein the quality of the social dialogue is strengthened by the concern for the „public wellbeing” and the respect for the „competent authority”.

In this context, the transparency of the decisional act is more than a practice in fashion, or a pleasure of the civil society. Transparency represents an indicator for evaluating the quality of the procedures followed by public institutions and finally a genuine “test of honor” for the public service employees, regardless the fact that they are in the service of a local public authority, under the leader of a Mayoralty's executive, or denominated “public officials” in the service of the central Government, or other national authority. All the international and European documents emphasize the distinct importance of the principle and mechanisms of transparency's ensuring in the public sector.

The requirement of the necessary and sufficient conditions for the functioning of the public institutions under conditions of transparency and openness towards the public has not been ignored as well by the governmental policies and national development plans.

The statement that there are no numerous legal instruments, normative acts that oblige the public institutions to function in a transparent and responsible manner would be a false one. Nevertheless, the citizens continue to complain of the discriminatory treatment on behalf of the authorities at their request and receipt of public information. The most active non-governmental associations notice regularly certain major and persistent discrepancies between the legislation in force and practices followed by the authorities. The monitoring reports carried out by Acces - Info in 2007 and 2008 present a situation marked by ambiguities and ignorance within the relationship between different types of public authorities, especially central ones, and the citizens. The questions regarding the earnings of the high officials came up against the unfriendly and

inflexible tone of the State bureaucracy that is able to interpret the laws exclusively in own interest, so that the earnings statements should not contain "compromising" data, considering the moves of independent press, particularly of the Association of Independent Press as "impertinent". In this respect it is useless to be mentioned the deliberate absence of such topics from any public debates of the company Teleradio - Moldova, the achievements of which, as regards the ideological servility and gloomy propaganda, broke all the records. During the last months of 2008 only the daring effort of the few independent press groups, centers of investigation, and think tanks added some social optimism. However, we should mention that the modest progresses remarked in the democratization and transparency sectors are more than eloquent for the public opinion from the Republic of Moldova, as well as for the Western institutions, which evaluate the course maintained by our country.

In the present study we aim to focus on the evaluation criteria of a public institution, the Parliament of the Republic of Moldova, as a case study, and as „an object in motion”, taking into consideration that the Legislative will renew its political staff in after the elections of Spring 2009, according to the general poll from March/April. However, it still exists the risk of preservation of numerous defects pertaining to the current parliamentary system. We decided to analyze the functioning and the achievements of the legislative process by means of the transparency and openness indicators within a comparative study that comprised simultaneously 4 national legislatures from: the Republic of Moldova, Romania, Bulgaria and Georgia. The study allowed us to analyze, in comparative terms, the institution that was in the center of the last decade events in these States. This can be due to the fact that both in Bucharest and in Sofia, the Parliaments worked hard in order to reach the last wave of accession to the EU, while in Georgia the Parliament determined the change of the political system, as a result of the „revolution of roses” from Tbilisi. Within the Parliament from Chisinau the political class has tried to apply an autochthonous model of political change, an „evolutional” model, constituted on the basis of a national consensus, more or less defined as such by the main leaders of the opposition or government parties.

Notwithstanding, to what extent did the Parliament of the Republic of Moldova become more transparent and more responsible in the last 3-4 years from the last elections? How can we measure the „evolution”, which the analysts or most of the politicians affirm or contest, while speaking about the most important institution of the political system of the Republic of Moldova? How much can we rely on opinions and perceptions, and to what extent the number of laws and resolutions approved by the Legislative is relevant for carrying out discussions concerning the quality of the legislative process? By what means can we

distance from the crass subjectivity of the personal opinions, following a grill of analysis based on uniform indicators that are easy to be quantified and measured, within the effort to establish further tasks to be carried out by the political class, and more ambitiously - a map for reforming the legislative institution from the Republic of Moldova? This Legislative should finally comprise the quintessence of all the qualities and functions that the citizens would like to know while being concerned of the Legislative activity, or while communicating with the national elected persons.

From the very beginning we should specify that we understand by *transparency* - the totality of means and forms via which a public institution makes acquainted its avail towards the citizens, as a permanent, systematic and quantifiable function. Further we will refer less to the irregular media shows of certain representatives of the Legislative, and more on what is being called "institutional excellence" or the capacity to produce qualitative services, provided on useful time and under appropriate conditions to the citizen who wants to be informed, to mass media community and to the associative environment. We are convinced that transparency has a curative effect upon the public space. We were taught to expect that the transparency should prevent the certain public authorities' abuses, by setting up standards of integrity and achievement, at the level of this country citizens' expectations.

In its capacity as a "supreme representative body of the people in the Republic of Moldova" and as a "single legislative authority of the country, elected by universal, equal, direct, secret and freely expressed suffrage", the Parliament of the Republic of Moldova represents an unicameral body<sup>51</sup>, elected for a 4 years term, composed of 101 deputies. The Parliament of the Republic of Moldova is the institution that by definition should provide a model of transparency and openness towards the public, since it is the single legislative authority of the State, and its normative acts rule the social relations, establish the rights, duties and responsibilities of people, define the political, economic and social directions of the State, thus, influencing directly the conduct and living standards of every person.

The present study is the result of a research that aimed to evaluate, from legislative and institutional viewpoints, the transparency level of the Parliament of the Republic of Moldova, the manner wherein the legislative acts are applied in order to strengthen the public mechanisms of monitoring of the executive and public sectors in the State. The team of the report made an attempt of a forecast of the legislative institution openness towards the society, carrying out

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<sup>51</sup> *Constitution of the Republic of Moldova*, adopted on July 29, 1994 // Official Gazette 1, August 12, 1994

a legislative, institutional evaluation, and consulting the opinions of the concerned factors upon this fact, identifying the drawbacks and problems regarding the lack of transparency of our Parliament. This study on the openness of the Parliament allows us to examine in detail and in structured manner the quality of democracy in the Republic of Moldova, from the perspective of exertion of certain rights and liberties recognized by the internal and international legislation - such as the following directions of the access to the information elaborated and examined by the Parliament, directions that, at the same time, constitute defining elements of the transparency concept:

- access to the documented information (drawn up either within the legislative, or presented as legislative initiatives, responses to the interpellations, informative notes, reports, access to the normative acts adopted by the Parliament, etc);
- access to the plenary sittings and to the sittings of working bodies of the Parliament;
- knowing the expenditures determined by the Parliament institution activity;
- the parliamentary achievements of each deputy.

The methodology of the study offers to any citizen referential elements to evaluate the general and particular climate of the transparency in the Republic of Moldova's Parliament, and, at the same time, draws the attention upon a long list of actions necessary to "liquidate" the old illnesses, inherited from the soviet regime in locking the information, for making difficult or even impossible to access the information related to financing, planning and monitoring the basic activities implemented by the Legislative. This study highlights certain arguments in the favor of the statement that an open Parliament means a Parliament responsible towards its citizens and is recognized as such by the national and international public opinion.

The report was done within the framework of the project *Transparency, accountability and civic participation in the Black Sea Region - a plea for open Parliaments in Romania, Bulgaria, Moldova and Georgia* and marks the beginning of an advocacy campaign that aims to contribute to the "opening" of the Parliament's activities.

## ***II. Legal and institutional framework for an open Parliament in the Republic of Moldova***

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From a legislative point of view the transparency of the Republic of Moldova's legislative body is established by a number of laws. These laws ensure the transparent activity of the Parliament, with the legislative institution being integrated in the country's constitutional system.

The acts that establish and validate the parliamentary transparency are the following:

1. The Constitution of the Republic of Moldova, adopted on 29.07.94 // Official Gazette 1, 12.08.1994
2. The law on the statute of the MPs in the Parliament nr. 39/07.04.94 // Official Gazette 4/78, 30.04.1994
3. The Law on petitions nr. 190/19.07.94 // Official Gazette 4/47, 08.09.1994
4. The Public Service Law nr. 443/04.05.95 // Official Gazette 61/681, 02.11.1995
5. The Law for adopting Parliament's Regulations nr. 797/02.04.96 // Official Gazette 81-82/765, 19.12.1996
6. The Electoral Code, nr. 1381/21.11.97 // Official Gazette 81/667, 08.12.1997
7. The Law on access to information nr. 982/11.05.2000 // Official Gazette 88-90/664, 28.07.2000
8. The Decision for approving the Conception about the cooperation between Parliament and civil society // Official Gazette 5-8/55, 13.01.2006
9. The Law about the behavior Code of the public officials nr. 25/22.02.2008 // Official Gazette 74-75/243, 11.04.2008.

Constitution of the Republic of Moldova stipulates the procedure of formation and functioning of the national legislative institution (Parliament), procedure of enactment and of preparing the draft paper of the law and normative acts (Chapter IV). According to Art. 65, point 1, the sessions of the Parliament are public, but certain sessions can be declared closed at the decision of the members of the Parliament. A similar stipulation from the Constitution is to be found in the Parliament's Regulation as well. According to the Art. 99, the sittings of the Parliament are public, except the cases in which, at the demand of the Chairman of the Parliament, of a parliamentary faction, or of a group formed by at least 5 deputies, it is decided, with the vote of the majority of present deputies, that a specific one should be closed. The same article mentions that the plenary sittings of the Parliament can be presented by direct transmission at the national public radio and television channels in accordance

with the provisions of the Audiovisual Code of the Republic of Moldova. The shorthand records of the public sessions are placed on the official website of the Parliament. The official press releases regarding the sittings of the Parliament are made public purely via the Press Service of the Parliament.

According to the Article 100 of the same Regulations, only the authorized persons or those invited by Standing Bureau have the right to be present at the plenary sittings of the Parliament. The debates within the sessions of the Parliament are recorded on a magnetic tape and are written in shorthand. The deputies have the right to verify the accuracy of the shorthand records by comparing it with the magnetic tape (Art. 109).

According to the Art. 24 of the Regulations of the Parliament, the sessions of the Standing Committees are public. The mass media representatives accredited at Parliament can be present at the public sessions of the Committee, and the official information regarding the works of Committee is made public and posted on the website of the Parliament. The Committee can decide, at the proposal of one of its members, to unfold its session in closed manner in the case the public debate of the issues can harm the protection of the citizens or the national security. With the view of informing the society about the activity of the Parliament, the Apparatus of the Parliament ensures the existence of the website of the Parliament on which are placed information regarding the Staff of the Parliament and its activity, the agenda of plenary sessions, drafts legal acts and legislative proposals arrived at the Parliament.

#### *Law on the Access to Information*

According to the Art. 5 of the respective law, the Parliament of the Republic of Moldova is considered as official information provider, in its capacity of central public authority. Also according to the Art. 4 of the same law, the Parliament has to offer the solicitants official information and any person has the right to seek, obtain and disseminate official information.

According to this law, the Parliament has to:

1. actively provide accurate and timely information to citizens on issues of public and personal interest;
2. provide the free access to information;
3. observe restrictions on access to information, as stipulated by law, in order to protect confidential information, private life of citizens and the national security;
4. observe the time limits set by law for providing information;

5. publish their own normative acts, adopted in accordance with the law;
6. preserve, under the terms set by law, their own documents, the documents of institutions whose successors they have become, the documents that define their legal status;
7. protect the information in their possession from unauthorized access, destruction or modification;
8. preserve information, controlled by them in the updated form;
9. immediately publish, for the knowledge of the public at large, the information that has become known to them in the course of their activity, if such information:

- a) can prevent or diminish danger to citizen's life and health;
- b) can prevent or diminish the danger of damages of any type;
- c) can prevent the publication of untruthful information, or can diminish the negative impact from the publication of such information;
- d) is of outstanding importance to the society.

In compliance with the same article of the respective law, with the view of ensuring the free access to the official information, the Parliament will:

1. provide office space appropriately equipped for research, which will be made available to information solicitants;
2. appoint and train officers who will be in charge of providing official information;
3. develop regulations on the rights and obligations of officers in the process of making available documents and official information, in accordance with the present law;
4. grant necessary assistance and help to information solicitants for the search and identification of information;
5. grant effective access to the registers of information providers, which will be kept in accordance with the legislation in registers;
6. make their meetings open to the public, in accordance with the enforced law.

In order to facilitate the free access to information, the Parliament should also publish the information that contains:

- the description of the institution's structure and location;
- description of the institution functions, activity areas and types of activities;



- description of the subdivisions and their functions, their working hours, including the days and hours of working with the public of the officers in charge with providing information and official documents;
- final decisions on the main examined issues.

The law stipulates as well in the Art. 11 that the above mentioned information should be made public beyond the process of examining the access to information. According to the same article, the Parliament should:

- publish guides at least once every year with the list of ordinances, resolutions, other official documents issued by the corresponding institution, as well as guides describing the areas related to any information that can be provided;
- provide to the mass media's representatives official data about their activity, including areas, in which they can provide information.

Art. 13 of the present law stipulate that the access to the information regarding the Parliament can be ensured by:

1. listening to the information that is verbally presented;
2. examining the document or information (or parts thereof) on the institution's premises;
3. releasing a copy of the requested document or information (or parts thereof);
4. releasing a copy of the document's translation (or parts thereof) into a language different from the original one, for an additional fee;
5. sending by mail (including e-mail) the copy of the document or information (or parts thereof), a copy of the documents' translation into another language, upon the applicant's request, for a corresponding fee.

*Law on legislative acts*<sup>52</sup> stipulates, as basic principles, the transparency, publicity and accessibility within the activity of drawing up, adoption and applying of the legislative act, but does not point out rigors versus the Parliament and the subjects having the right of legislative initiative with the view of bringing them into operation. It is the Art. 17 only wherein it is mentioned that in case of elaboration of an ample and outstanding draft, the working group can

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<sup>52</sup> *Law on Legislative Acts*, no. 780-XV from December 27, 2001// Official Gazette no. 36-38 from March 1, 2002

edit a series of theses in order for the public opinion and the authority which sets up the group to express their opinion upon them.

The accompanying dossier of the final version of the draft legal act should comprise:

1. the act based on which the bill was initiated;
2. the act via which the working group and its nominal staff were set up;
3. the results of a scientific research
4. the informative note that will contain the examination results of compatibility with the Community legislation, as well as the list of respective regulations of the Community legislation;
5. notes and results of the examination;
6. list of conditioned documents that need to be drawn up or revised in connection with the adoption of the legislative act;
7. the final report of the working group;
8. other necessary acts.

*Code of Conduct for Public Officials* imposes the principle of transparency to the activity of public officials. Thus, according to Art. 8, the officials of the Parliament have to:

1. to actively provide accurate and timely information to citizens on issues of public interest;
2. to provide the free access to information;
3. to observe the time limits set by law for providing information;

Art.2 of the present law, which stipulates the principles whereof the public official should guide, lacks the principle of transparency. The law includes general provisions to the Art.8, as:

1. actively provide accurate and timely information to citizens on issues of public interest;
2. provide the free access to information;
3. observe the time limits set by law in the process of providing information;
4. observe the information access' restrictions.

There have been many debates on the mentioned law, the specialized NGOs being discontent with the declarative character of the corresponding law, causing serious harms to the national legislation in the area of access to information and freedom of expression.

### *Concept of Cooperation between Parliament and the Civil Society*<sup>53</sup>

On December 29, 2005 the Parliament of the Republic Moldova approved a resolution for coming into force of the present concept. The cooperation shall be held in the following forms:

#### *a) Boards of Experts*

The standing parliamentary committees, as prescribed by the Parliamentary Rules of Procedure, shall set up under the committees permanent boards of experts from amongst of representatives of civil society organizations, according to the main directions of the committees' activity.

#### *b) Permanent Consultation*

The Parliament shall provide civil society with drafts of its legal acts. In this respect, the drafts shall be placed on the official website of the Parliament. The concerned civil society organizations shall be able to freely access the information and submit expert opinions, impact analyses, comments, opinions, assessments, proposals, and other materials, observing the minimum cooperation standards.

#### *c) Ad-hoc Meetings*

On the initiative of the Speaker of the Parliament, Standing Bureau, standing parliamentary committees, parliamentary groups or civil society organizations may organize ad-hoc meetings for consultations regarding concrete issues on the Parliament's agenda or related to other matters of national interest.

#### *d) Public Hearings*

Each standing parliamentary committee shall organize public hearings at least once a year in order to consult civil society organizations concerning the issues included in the parliamentary agenda or other matters of national interest.

#### *e) Annual Conference*

To evaluate the degree of cooperation and decide on new directions of cooperation between the Parliament and civil society organizations, the Speaker of the Parliament shall convene an Annual Conference with participation of the representatives of civil society organizations, as well as representatives of the Parliament.

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<sup>53</sup> <http://www.parlament.md/news/civilsociety/en.html>.

The contribution of the civil society organizations will be taken into consideration under condition that they will be submitted within 15 working days from the date of draft legal acts placement on the website of the Parliament or from the deliberate request of the Parliament. Starting with February 1<sup>st</sup>, 2006, the Parliament shall ensure the placement of draft legal acts, registered on the official website of the Parliament. It can be concluded that nevertheless, the presented legal framework needs numerous modifications in order to settle the identified matters (presented in detail in the next chapter) and to strengthen its' bringing into operation.

According to the Art. 7 of the Parliamentary Rules of Procedure, the leadership of the Parliament of the Republic of Moldova consists of Chairman, the 1<sup>st</sup> and 2<sup>nd</sup> Deputy Chairmen and the Standing Bureau of the Parliament<sup>54</sup>. The present Parliament of XVI legislature is made up of 101 deputies affiliated to 4 parliamentary factions:

- Faction of the Party of Communists of the Republic of Moldova - 55 deputies;
- Faction "Alliance "Our Moldova" - 13 deputies;
- Faction of the Christian - Democratic People's Party - 7 deputies;
- Faction of Democratic Party of Moldova -11 deputies;
- Independent deputies - 15 deputies.

The Parliament is constituted of 9 Standing Committees, as follows:

- Committee for Legal Issues, Appointments and Immunities;
- Committee for Economic Policy, Budget and Finance;
- Committee for National Security, Defense and Public Order;
- Committee for Foreign Policy and European Integration;
- Committee for Human Rights;
- Committee for Public Administration, Environment and Territorial Development;
- Committee for Culture, Science, Education, Youth, Sports and Media;
- Committee for Agriculture and Food Industry;
- Committee for Social Policy, Healthcare and Family.

The activity of the Parliament is administrated by a secretariat called the Apparatus of the Parliament. The Apparatus is constituted of officials and

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<sup>54</sup> *Resolution Concerning the Approval of the Concept of Cooperation between Parliament and Civil Society*, no. 373/29.12.2005 // Official Gazette no. 5-8/55, January 13, 2006.

ensures an organizational, informational and technological assistance to the activity of the Parliament, Standing Bureau, standing committees, parliamentary fractions of deputies. The structure of the Parliament staff are approved by the Parliament. There are 194 public servants in the organizational chart of the Parliament's Apparatus<sup>55</sup>.

The structure of the Apparatus of the Parliament includes the following positions:

- Director General
- Mass - Media Relations Section
- The Information - Analytical Department
- The Human Resources Section
- Petitions and Hearings Section
- The Department for Parliamentary Documentation
- The Administrative Department
- The Finances, Budget and Accounting Department
- The Law Department
- The External Parliamentary Relations Department.

The organization and leading of the activity of the whole Parliament staff is ensured by the Director General. At present this position is vacant and the Chairman of the Parliament administrates indirectly the Apparatus of the Parliament. According to the Art.141 of the *Parliamentary Rules of Procedure*, the Apparatus works on the basis of the Parliament staff Rules, approved under the resolution of the Parliament as well as on the basis of other legal acts and regulations of internal order. Unfortunately, at present no Regulations of the Parliament staff have been approved. Accordingly, the activity of the parliamentary officials is subjected to the deputies' aims.

After the approval of the *Concept of Cooperation between Parliament and the Civil Society*, the Information - Analytical Department was given several additional duties. This Department receives from the Department for Parliamentary Documentation draft legal acts, in electronic form, within a working day from the date of their receipt by the standing committees. Thus, the Information - Analytical and Forecast Service of the Parliament staff:

1. provides assistance to the Standing Committees and civil society organizations for making up the Boards of Experts, identification of

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<sup>55</sup> *Resolution concerning the Structure of the Parliament's Apparatus, the Personal Establishment of the Apparatus of the Parliament and the welfare insurance of the Apparatus Staff and of the Members of the Parliament* no. 22/29.03.2001 // Official Gazette no. 42/173, April 6, 2001.

- experts from the civil society organizations, the specialization of which do not correspond to the areas of activity of the Standing Committees; invites, on list basis, experts to the works of the Boards of Experts;
2. publishes draft legal acts on the official website of the Parliament within a working day from the date of receipt by the Department for Parliamentary Documentation, unless the Chairman or Deputy Chairmen will not establish another term;
  3. receives the civil society's contributions in time limits prescribed by the Concept of Cooperation between Parliament and the Civil Society;
  4. confirms, within a working day from the date of receipt, the receipt of contributions;
  5. distributes the contributions to the Standing Committees within a working day from the date of their receipt;
  6. receives, in written form, the responses of Standing Committees, concerning the civil society's contributions;
  7. Informs, in written form, the Chairman of the Parliament upon the cooperation process with the civil society;
  8. provides assistance to Standing Committees concerning the issuing of answers to the civil society's organizations;
  9. holds the register of the civil society organizations including the following information: the entire name of the organization, registration number and its professional background;
  10. holds the register of contributions and argued responses;
  11. logistically organizes, together with the Administrative Department of the Parliament staff, ad-hoc meetings within 5 working days from the moment that the Chairman of the Parliament, Standing Bureau, Standing Committee, Parliamentary fractions or civil society organizations begin to carry out the right of initiating such meetings;
  12. provides assistance to Standing Committees for organizing public hearings, within 2 days, of all civil society organizations concerning the initiative of Standing Committees to organize public hearings;
  13. organizes the annual conference, within 30 working days from the moment of being conceived by the Chairman of the Parliament, providing to the concerned actors more details regarding the organization of the conference.

In 2006 there were received about 130 of contributions from the civil society, and in 2007 - 159 contributions.

### *The website of the Parliament*

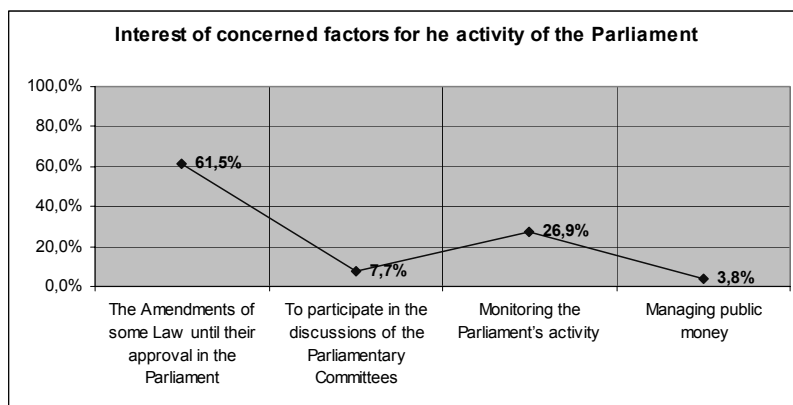
The website of the legislative institution represents a means for informing the population and for ensuring transparency of the Parliament's activity. The site of the Parliament has the following web address: [www.parlament.md](http://www.parlament.md). The present concept of the site was worked out in 2001 and has not been modified since then. According to the Art. 13 of the Parliamentary Rules of Procedure, the Standing Bureau ensures the control of posting in time the draft legal acts, agenda, plenary sittings records, as well as other information that has to be published on the website of the Parliament.

On the site there can be found information regarding the structure of the Parliament and of the Apparatus, their contact information, press releases of Mass - Media Relations Service, the agenda of Parliamentary Committees and of plenary sittings, plenary sittings records, draft laws in the course of the legislative process, draft laws approved in the first reading and approved drafts. On the site there can be found 5 numbers of the *Buletin Parlamentar/Parliamentary Bulletin* (January - May 2008) and 4 numbers of *Curier Parlamentar/ Parliamentary Courier* (no.1 - 4, 2006-2007). From institutional standpoint, the Parliament of the Republic of Moldova has a sufficient structure. Unfortunately, there is no Regulation that settle the activity of the Apparatus of the Parliament.

### III. Relevant stakeholders' assessment on the transparency of the Moldovan Parliament

For a general overview it should be mentioned that according to the methodology of research, IDIS "Viitorul" and its colleagues from 3 countries involved in the project (Romania, Bulgaria, and Georgia) worked out two questionnaires: one for the civil society, trade unions and business environment, and the second for mass media. From 35 questionnaires that were sent to the NGOs and 25 questionnaires to mass media, we finally received only 17 questionnaires filled out by the NGOs, 6 questionnaires from mass media, one questionnaire from General Confederation of Trade Unions<sup>56</sup> and one from Global Compact Network in Moldova<sup>57</sup>.

According to the statements of those questioned, their interest is determined by the finding of insignificant information regarding the approval of laws, as well as due to the rather reduced degree of transparency of the Parliament of the Republic of Moldova. Those questioned have been very concerned with the activity of the Parliament's institution. On the basis of a scale of 1 to 5, 5 being the *maximum*, the interest of the concerned factors reached 4.1. From the figure below one can see the subjects that express concerns for the issues in question, namely: amendments to certain laws till their approval, participation to the Parliamentary Committees, monitoring of the parliamentary activity.



<sup>56</sup> In the Republic of Moldova there is only the Confederation of Trade Unions of Moldova that comprises all the branches of trade unions. Accordingly, the trade union on a certain area negotiates with the authorities via the administration of the Confederation of Trade Unions of Moldova.

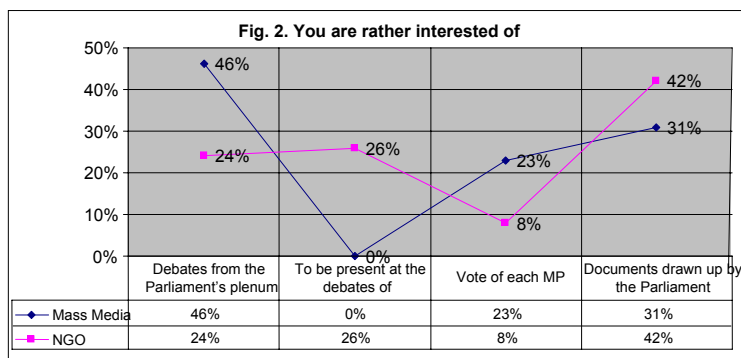
<sup>57</sup> The network from Moldova declared its adherence at the end of 2006, including at present 29 member companies, <http://www.undp.md/gc/index.shtml>.



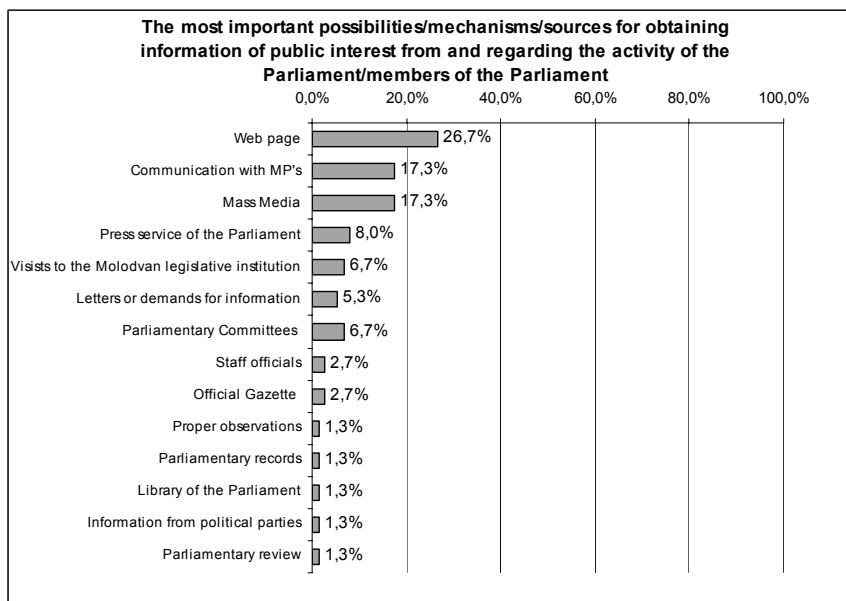
The civil society is interested as well in:

- minutes of the Parliament;
- results of the control over the legislation implementation;
- informative notes and notes of the ministries; there should be mentioned here that the notes of the ministries or Government on a certain legal act are not made public, therefore, the citizens cannot entirely perceive and evaluate the activity of public institutions;
- meetings with members of the Parliament with the view of presenting them the standpoints of the organization regarding the public policies; debating on the draft laws regarding the corruption prevention.

Regarding the activity of the Parliament, the interested factors are interested especially in the documents elaborated by the Parliament and in debates of the Parliament. In contrast to the media, members of the NGO are interested mostly by the documents drawn up by the Parliament, while media is concerned with the debates of the Parliament's plenary sessions.



The most accessible source of information is the Parliament web page. Other sources of collecting relevant information are: communication with the deputies, mass media, PR departments of the Parliament, presence at the Parliamentary sittings, inquiries for public information, etc.



In the last three years the respondents say have required various types of information from the Parliament , such as:

- statistics of petitions and inquiries for accessing public information;
- information concerning the earnings and property statement of the Chairman of the Parliament;
- information concerning the cars on duty of the Parliament;
- information concerning the rules for using the cars on duty of the Parliament;
- information regarding the mass media organizations that have been financially supported by the Parliament between 2005-2007, including the procurement of subscriptions, contracts for advertisement, etc;
- means of the Parliament's involvement into the process of promoting and implementation of the law concerning the voluntaries;
- Activity of the custom-house posts and calculation of taxes collected during the passing of these internal custom-house posts;
- Attitude of the executive power towards the sequestration of the vehicles with Moldavian matriculation numbers on the left bank of the Dniester;

- Modification of the legislation regarding the indexation of money deposits for the persons who detained money in the branches of Economy Deposit Bank from the left bank of the Dniester;
- Request of information regarding the activity of Parliamentary Committee for External Policy concerning the ratification of the Rome Statute of the International Criminal Court.

The respondents have indicated the most relevant obstacles that impeded in obtaining public information from the Parliament of the Republic of Moldova, such as:

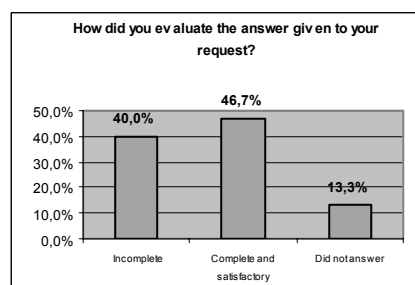
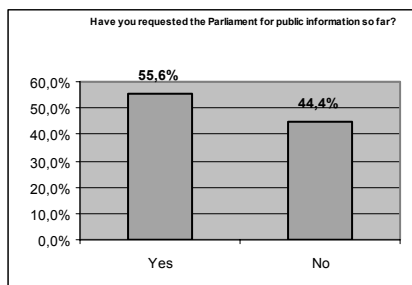
- Lack of transparency in the decision making process;
- Lack of an effective collaboration with the Civil Society within the decision making process;
- The low degree of transparency of the Parliamentary structures;
- The reluctance of the Presidents of the Parliamentary Committees;
- The conservatism of certain deputies and officials;
- The non-receptiveness for dialog of certain deputies, especially from the majority fraction;
- Bureaucratization of the process;
- Lack of comprehensive information regarding the acts that are in the examination process;
- The late postage of the Parliament's proceedings and the lack the Committees' proceedings;
- The impossibility to participate to the sessions of Committees;
- The renewal of the official web page and the lack of corresponding information on the new one;
- The non-direct transmission by means of TV or Radio of the debates in plenary sessions;
- The shorthand records of the sittings in plenum are published late;
- Formal and ineffective character of the messages disseminated via the Press Service;
- The lack of a real Centre for Documentation and Research, which would be accessible for each person.

As regards the specific impediments for mass media, they are as follows:

- Lack of publishing information with regards to the members of the Parliament's income statement (it is published only if the person wishes to);
- Lack of materials, containing the text of the law that is to be approved;

- Deputies often refuse to present their additional comments concerning certain issues;
- It lacks the data regarding the expenditures made by fractions and deputies during official delegations (on the web page);
- Guard service (for instance the journalists are not allowed to enter the Parliament, except for the days when sittings take place, although they have convened beforehand that they are going to a deputy's office);
- Documentation and Press Services - the drafts are not made public before their examination;
- The annual reports of certain institutions, including the Government, never reach the media;
- Political fractions - it would be interesting for the media to know more about the sessions of the fractions;
- Refusal of certain deputies to make statements for media, declaring that certain sessions of parliamentary committees are closed for the media;
- Not all the draft laws are published on the web page of the Parliament;
- The access in the building of the Parliament is restricted, except for the hours of plenary sittings unfolding;
- The meetings with the Speaker of the Parliament are private;
- It is forbidden the use of mobile phones (which is an indispensable element for a journalist) in the Parliament's building.

Almost half of those surveyed requested information from the Parliament. Unfortunately, half of the received responses were incomplete. 44,4% of the surveyed NGOs did not request information from the Parliament.



Rather interesting is the fact that no one from the target groups has brought the Parliament to court for infringing the right to freely access information. There are only few judicial cases brought to Court by citizens based on the violation of the right of access to the information<sup>58</sup>, but these were won by the Parliament.

Last, our questionnaire contained the evaluation of the Parliament' degree of openness assessed by the stakeholders. According to the opinion of the surveyed persons, the degree of the Parliament's transparency is of 3.38, on the basis of the scale from 1 to 5 (5 - *completely transparent*). It should be mentioned that this is the highest indicator among the three surveyed countries - Romania, Georgia, and Bulgaria.

Finally, all the stakeholders that have been surveyed manifested openness towards an advocacy campaign that would contribute to the increase of the Parliament's degree of transparency.

As far as concrete experiences of Moldovan civil society in involving Parliament are concerned, further on you may find a series of examples in that respect.

The Association Acces Info was especially interested in the applying and monitoring of the law concerning the access to information. The experts of this association monitor the current state of affairs regarding the access to the official information, focusing on topics of interest for the solicitants. Most of the information requests refer to the legislative process, deputies' activity in the Parliament, deputies' income in their capacity of the representatives of the people; administrative expenses of the Parliament; explanation of the MP's standpoints towards certain phenomena in the society; interpretation of legislative norms and practices, etc.

In its activity, Acces Info focused more on the monitoring of the implementation of law concerning the access to information, sending to the Parliament several information requests. According to the monitoring study that Acces Info carried out in 2008, the Parliament staff, Government staff and the Apparatus of the President of the State gave timely and complete responses<sup>59</sup> at the category of summary information.

The questions addressed by Acces Info and which remained without answers from the Parliament of the Republic of Moldova regarded the following aspects:

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<sup>58</sup> <http://www.acces-info.org.md/index.php?cid=143>

<sup>59</sup> Acces Info, *The right to information: on paper and in reality*, p. 26

- At what stage is the implementation of the project regarding the consolidation of the Parliament's capacities; to what extent is the experience of Baltic states applied?
- In the last years the number of the strategic programs increased, but unfortunately, the process of bringing them into operation is often unsatisfactory. This is primarily due to the lack of the necessary financial resources. It is planned to revise the programs in order to avoid the overlapping of certain provisions and to adjust them to the reality. This will accelerate the programs implementation and will represent as more truthfulness towards the givers.
- What are the estimated results of the Concept of Cooperation between Parliament and the Civil Society implementation? How many normative acts were drawn up between 2006-2007 with the direct participation of the non-governmental organizations?

The Association of Independent Media (API) has organized a specific campaign intended to raise the level of transparency. Via the campaign "Avere la vedere" (Wealth at sight), API promoted the transparency of income and liabilities declarations of the high officials and public officials. API sent letters and electronic messages to all the members of the Parliament with the proposal to offer it these declarations in order to scanned and posted on the API website. At present, only 16 members of the Parliament, as well as the Chairman of the Parliament, have agreed to make public their incomes. Subsequently, a group of deputies proposed to modify the Art.13 of the law concerning the assets/income declarations, mentioning that „they are being annually published in the republican or local mass media, as well as on the official web pages of the Presidency, Parliament, Government, ministries and of other authorities or local and central public institutions<sup>60</sup>.” Nevertheless, the data from income declarations have an ambiguous character. Thus, the net income of the parliamentary activity of the Speaker Marian Lupu is of 182,748 lei (approx. 11,420 euro), which means about 15,229 lei (approx. 950 euro) per month in 2007, but in the letter received from the Parliament and via which we requested the deputies incomes it was indicated the sum of 9800 lei (approx. 612 euro). It should be mentioned that the salary of the Speaker is of 8,800 lei<sup>61</sup> (approx. 550 euro).

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<sup>60</sup> *Law concerning the statement and control of earnings and property of State high officials, judges, prosecutors, public officials and of certain key-function persons* // Official Gazette no. 124-125/991, September 5, 2002.

<sup>61</sup> Resolution concerning the structure of the Apparatus of the Parliament, personal establishment of the Apparatus and of the Parliament and to the wealth insurance of the

The Association for Participatory Democracy ADEPT - has initiated a common project with the Moldovan Parliament called *Parliament of Youth*. This project represented an attempt of simulation of the decision-making process within the Parliament of the Republic of Moldova while contributing to the popularization of the civic responsibilities among the youth<sup>62</sup>. The project *Parliament opened to citizens* (September 2005 - August 2006) was another project implemented by ADEPT together with CREDO. It proposed to promote certain modern practices of collaboration between the representatives of the Parliament and the citizens, to carry out and to test new models of consulting the civil society's representatives by the competent Parliamentary Committees and to form a future institutional framework for collaboration. The project's main outcomes were two draft laws elaborated with support from civil society organizations that were further advanced to the specialized parliamentary committees.

Another initiative belongs to the Corruption Research and Prevention Center (CRPC). The CRPC's experts carry out the corruptibility examination of the draft legal acts and present examination's reports to the Parliament of the Republic of Moldova.

Other civil society initiatives were aimed to grant support to Parliament, including the UNDP and IPP Moldova assistance projects<sup>63</sup>.

There have been drafted four studies within the program *Consolidation of the institutional capacity of the Parliament of the Republic of Moldova: EU-Moldova relations: Role of the Moldovan Parliament*, by Gundars Ostrovskis, *Parliament of Latvia (Saeima)* (2006)<sup>64</sup>, *Technical Audit of Informational System of the Parliament of the Republic of Moldova and Analysis of Informational Processes and Flows in the Decision Making Process* (2006)<sup>65</sup>, *Communication Strategy for the Parliament of the Republic of Moldova* by Sandra Pralong (2006)<sup>66</sup>. Most of these studies have unfortunately been ignored by the Parliament's deputies and officials, especially due to the standpoints of the deputies and the restrained budget.

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Apparatus staff and of the members of the Parliament // Official Gazette no. 42/173, April 6, 2001.

<sup>62</sup> <http://www.parlament.md/youthparl/info/>

<sup>63</sup> *Civil control over the security sector: role of the Parliament*, a project of consolidation of the Parliament's capacities to carry out its role of civil control over the security

<sup>64</sup> <http://undp.md/publications/doc/mission%20reports/MD%20Parliament%20role%20in%20RM-EU%20relations.pdf>.

<sup>65</sup> <http://undp.md/publications/doc/mission%20reports/IT%20assessment%20of%20the%20Parliament.pdf>.

<sup>66</sup> [http://undp.md/publications/doc/mission%20reports/Communication\\_Strategy\\_en\\_final.pdf](http://undp.md/publications/doc/mission%20reports/Communication_Strategy_en_final.pdf).

Notwithstanding, the number of projects on monitoring the activity of the Parliament, as a public institution, it is being limited to minimum. The non-governmental organizations prefer rather to comment upon a certain law that presents interest for them, than to imply themselves into a more ample effort concerning the accountability of legislative activity. This can highlight a low trust into the chances of certain initiatives regarding the “openness” of the Parliament.

From the beginning there should be made a distinction between the possibility of accessing public information by legal entities (as the case of project target stakeholders) as compared to ordinary citizens. If the first ones benefit from the existence of the Concept concerning the Cooperation between Parliament and the Civil Society (on the basis of which they can be present at the Committees’ Sitzings or at the Plenary Sitzings), the common citizen has been completely distanced from the legislative process, relying only on the law on the access to information.

Nevertheless, the Art. 65 Paragraph (1) explicitly mentions the public character of the Parliamentary Sitzings, but immediately stipulates an exception (Art. 65 Paragraph (2) having a vague content, it is impossible to determine the criteria that establish the declaration of the closed Parliamentary Sitzings). The Rules of Procedure of the Parliament, unlike the Constitution, use the phrase „secret sitting”, hinting at the secret character of the information examined within such sittings and the duty of participants not to reveal it. Virtually, the closed character of the sitting does not represent in itself a motive to declare the examined information as secret or to limit the access to its proceedings. Besides the procedural provisions, there does not exist a legal provision that would limit the direct access of the public (the mass media representatives) to the Legislative plenary sittings. The participation of a common citizen to the Parliamentary Committees theoretically is possible, but practically is unfeasible. Firstly, Parliamentary guardian limits the access of the citizens to the legislative institution, the plenary hall is not equipped with chairs for visitors, and no Parliamentary Department has the duty to be concerned with welcoming the persons who want to be present at the Parliamentary sittings.

Also, the activity of the Standing Committees is difficult to be known. According to the legislation, the Committee may invite to its sittings any interested person and specialists from certain authorities of public administration, specialized organizations, as well as specialists from the Law Department of the Parliament’s apparatus, and secretariats of Standing Committees. Without invitation, the access to the Committee is limited.



The outdated technical equipment which is used by the Parliament's Apparatus is another problem that affects the degree of transparency in the Parliament. Making the legislative process more transparent would primarily mean the modernization of the entire set of means that Parliament staff uses at present to ensure the unfolding of the Parliamentary activity.

Lack of the electronic vote makes impossible the monitoring of the activity of each deputy. As well, the Parliament does not have the internet network of communication. The concept of the Parliament's current website is outdated, and it does not allow to view the draft paper itinerary from the Department for Parliamentary Documentation, where was registered its entrance in the Parliament, until its approval within the first lecture and subsequently the final lecture.

Also, the current version of the website does not allow to post the digital audio and video records of the Committees and plenary sittings. The Parliamentary Rules of Procedure provide for recording only of the plenary sittings and only on magnetic tapes, which makes impossible their postagat on the site.

In the spring of 2007 the Parliament cancelled the obligation of direct broadcasting of the Parliament's Plenary Sittings, being evoked the broadcasting's huge costs of about two million lei per year (157,000 USD) that are supported by the national radio and television channels. The obligation of direct broadcasting of the Parliament's Plenary Sittings was set up in 2005 and lasted only for two years.

The access of the common citizen to the information of the Parliament via petitions is problematical as well. Very often the Parliamentary officials refuse the application for information request, since it does not contain the solicitant's personal data, the given requirements being necessary in the case of a petition.

Thus, while in 2001 the number and themes of petitions were periodically published on the Parliament's website, beginning with 2005 these reports disappeared from the website, being necessary to request information on the basis of the Law on the Access to Information.

At present there is a lack of an internal Regulation with regards to the Parliament staff. The lack of this act, the approval of which is delayed, places the public officials from the Parliament at the service of deputies, and not at that of the Parliament.

The adoption of the Concept concerning the Cooperation between the Parliament and the civil society has apparently stimulated a key factor in the transparentization of the legislative process. The time limits for the NGO's consultation are of 15 days from the date of draft placement on the Parliament's site. The term of 15 days is a very short period of time to allow civil society organization to formulate well-grounded recommendations.

We draw the attention upon the lack of certain real mechanisms for participation of the large public in the process of legislative creation, as well as for making accessible the respective information. Publishing the legislative acts and organizing public debated for discussing these bills would be necessary steps that would contribute to the transparency of the Parliament's activity and identification of the most important social problems and would offer the large public the possibility to participate to the adoption of important decisions.

Monitoring the legislative activity is also a scarce effort been carried out by few NGOs in Moldova. The process of consolidating Moldovan civil society should constitute a premise for an increased interest of these organizations to monitor the Parliament not as a "lawmaker", but as a public institution.



#### **IV. Conclusions and recommendations for a more open Moldovan Parliament**

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##### **1. Approval of legislative acts**

- Lack of information concerning the itinerary of the draft law within the Parliament should be dealt with by *posting on the Parliament's website of the itinerary of each draft law, the place where the respective document is to be found*;
- Lack of documents attached to the draft law (notes, recommendations, opinions, etc) submitted by the voting in first lecture: the Parliament should also *post electronic copies of the acts issued at each stage of the above-mentioned itinerary. Constitution of the legislative act dossier that would comprise the additional acts from the Parliament and from exterior, being attached to the draft legal act*;
- Lack of information concerning the voted document (to be found only in the Official Gazette which is very expensive or on <http://lex.justice.md>).

##### **2. Opening of the Parliament's activity**

- The Apparatus of the Parliament, though has a very important role in ensuring the transparency of the Parliament's activity, does not have an internal Regulations on functioning, which implies the malfunction of the Parliamentary activity. Consequently, there is an urgent need for *approval of internal Regulations of the Parliament staff that shall contain clear divisions of the Apparatus, including the duties of each department*;
- Mass Media Relations Section is concerned at present only with the accreditation of the journalists and the ensuring of their requirements. *This Section should be reformed; as well it should assume a more important role not only in disseminating information to be covered by media, but in popularizing the legislative activity as well. This Section should ensure the segment of legislative training, providing different educational activities for journalists in order to be better acquainted with the activity of the Parliament*;

- Lack of information means apart from the internet could be addressed by: *touch screens displaying contain basic information concerning the Parliament of the Republic of Moldova, opening of an information center connected to the Department for Parliamentary Documentation and Mass Media Relations Section, where the visitors would be able to consult the State legislation, to formulate observations on certain drafts, etc. The information center would provide any information regarding the Parliament's legislative activity.*

The Parliamentary Plenary Sitzings are not accessible to the public, since:

- the video and audio transmission at public television channels have been suspended: consequently, *plenary sittings should be recorded (video and audio) and these recording should be posted on the Parliament's website;*
- The access of citizens to the Parliamentary Plenary Sitzings is allowed by the law, but difficult to be effectuated due to the administrative impediments: *The Information - Analytical Department should hold a register of the persons who want to take part to the plenary sittings. The Administrative Department should prepare space for 25 potential visitors at minimum. Mass Media Relations Section should present the public character of the plenary sittings;*
- The discussions of the Standing Committees are unknown and inaccessible for the public. Media is allowed to participate to these sittings. It is allowed to publish the content of the sitting, while the media cannot be obliged to be present till the end of the sitting. Therefore, *the agenda of each Standing Committee should be placed on the website; the sitting of each Standing Committee should be audio recorded and the record should be placed on the website; the note of a given draft legal act should be placed on site within the itinerary of each draft law.*

**3. Information regarding the deputies' activity and transparency of parliamentary related expenditures.**

- The legislative activity of each deputy is insufficiently known. There is need for *drawing up a legislative dossier for each deputy, including his photography and a short CV*;
- Individual votes of MPs are also unknown to the public, a problem which could be addressed through the *introduction of the electronic vote*;
- Information concerning the Parliament's budget spending, the travel expenses of the deputies, the earnings of the deputies *should be posted on the website of the Parliament, as well, including: the Parliament's budget, the bulletin on the annual reports and budget execution, the travel expenses for each deputy, announcements on public procurement made by the Parliament etc.*



**Transparency, accountability and civic participation**  
**BULGARIA**

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## ***I. Argument***

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The events around the fall of the communist regimes in Eastern Europe made the Parliament to be the most important institution of the transition. Practically the bulk of the symbolic political decisions were taken in or by the representative body (in the most radical cases they were taken in front of it). The direct coverage of many of the sittings by the mass media turned the assembly into a public forum of the democratization processes. If we are allowed to make the parallel - the 1989 events had the same effect on parliamentarism in Eastern Europe as the emergence of the mass political parties in the early years of the century. The immediate result was the dramatic increase of the political weight of the institution. Against these high expectations at the outset of the transition period, a time has come to evaluate what this main institution of representative democracy has delivered in terms of openness, democratic accountability and encouragement of civic participation.

### *The National Assembly in the Bulgarian Constitutional Model*

The role of the Parliament is determined by the new Bulgarian Constitution, adopted on July 12, 1991 after heated debates in the Great National Assembly - the constituent representative organ, supposed to establish the legal basis of the transition from authoritarian rule to democratic system of government. The Bulgarian Socialist Party (BSP), successor of the former communist party, had an absolute majority in it and an opportunity to dominate the Constitution making process<sup>67</sup>. It was decided that the Constitution was not to be ratified at a referendum, which could cast doubts on the "legitimacy" of the document and on its reliability as a foundation of the "rule of law"<sup>68</sup>. Partly due to the heavy amendment procedure, however, this did not prove to be the most important shortcoming of the text - it was rather its incapability to outline a stable governmental system ensuring a functioning balance between the chamber and the cabinet. In this respect, Bulgaria is an interesting and illustrative example of the problem concerning strengthening the government. Due to a complex mixture of traditionalism and political inertia, the Bulgarian founding fathers laid the grounds for a system of separation of powers with a strong emphasis on the assembly. The meeting point of these two lines of argumentation was the "Rousseauistic" logic of interpretation, which otherwise the traditional constitutional provisions have received in the Bulgarian basic law.

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<sup>67</sup> For an account of the constitution making activity of the Grand National Assembly see *East European Constitutional Review* 1/1 1992 p.4.

<sup>68</sup> See Ackerman, Bruce, *The Future of the Liberal Revolution*, New Heaven, 1992.

The first standard doctrine affected by this line of reasoning was the "parliamentarian democracy". According to article 1,1 of the Constitution, Bulgaria is a republic with a parliamentary form of government. The meaning of this provision is to underline the outstanding role of the assembly in the political process and to suggest that it will be the main instrument for expressing the general will of the people who are the only holder of the sovereignty in the State: "All State power comes from the people. It is exercised by them directly or through the bodies set by this Constitution." (Art. 1,2). To ensure the most legitimate "delegation" of the sovereign powers from the people to the assembly, after an experiment with a mixed system, the Bulgarian electoral law settled firmly on a pure proportional model with a four per cent rationalizing threshold<sup>69</sup>.

The privileged position of the assembly in the Bulgarian Constitutional order is further consolidated by another standard Constitutional doctrine - the separation of powers, which in the Bulgarian Constitution can be found in Art. 8.

The generally Rousseauistic rationale behind the Constitutional framework, however, did not produce conditions favorable for outright or repeated violations of individual human rights or any other forms of seriously oppressive majoritarianism (though it did have one negative consequence in the first five years of the Bulgarian transition - the concentration of the bulk of powers in the assembly led to distorted legislative executive relations and to a succession of week cabinets, both in terms of durability and policy making.) Yet the privileged position of this body was obvious. Thus legislation was not the only field where the assembly was supposed to be the main actor - its functions expanded to an untypical extent for most of the parliamentary regimes. For example, it practically attained (and still has) control over the electronic media (through a standing committee)<sup>70</sup>, it had (and still has) a monopoly to initiate a referendum (Art. 84,5 - strengthening the relations between the "sovereign will" and its only true "interpreter"), and it had and has a monopoly over the right to declare martial law (Art. 84, 12)<sup>71</sup>.

All these arrangements create the impression that the regime is supposed to operate under majoritarian assembly rule, however, it has functioned in a much more nuanced fashion than a real majoritarianism would imply. Parliamentary

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<sup>69</sup> For a detail description of the electoral systems applied in Bulgaria since 1990, see Kolarova, Romyana, Dimitrov, Dimitr, *Electoral Law of Bulgaria*, EECR 1994 2/3.

<sup>70</sup> See Kolarova, Romyana, Dimitrov, Dimitr, *Media Wars in Sofia*, EECR 1993 2/3.

<sup>71</sup> See Elster, Jon, *On Majoritarianism and Rights* EECR, fall 1992, "The system with fewest checks and balances is the Bulgarian one" (among the countries of Eastern Europe) p. 23.

government in Bulgaria follows the ideas for strengthening the cabinet and the executive, known under the heading of “rationalized parliamentarism”, the paradigmatic example of such a technique is the German ‘constructive vote of no-confidence’, which is designed to prevent parliamentary crises by combining the voting of a chancellor out of office with the appointment of a successor. Most of the techniques are designed to create durable and stable legislative majorities which can form and support a government, through the introduction of rules in areas which have been discretionary before that.

“Rationalization” offers very strong institutional incentives for the creation of stable parliamentary majorities and parties in general, even in political contexts where there are no established, programmatic political parties and democratic traditions. At the same time, rationalized parliamentarism may create ‘empty shell’ parties, waiting and searching for ideological substance. The comfortable position of the legislative majority and the cabinet, provided by the rigid empty shell of “rationalized parliamentarism”, creates the feeling of institutional omnipotence in the ruling party or coalition of parties. This gradually results in an increasing alienation of the party from the ‘political reality’, expressed in the political attitudes of the citizens.

#### *The Parliament and the Process of European Integration*

It is often argued that the process of European integration strengthens the government vis-à-vis the Parliament. This hypothesis is, to a large extent, inapplicable in Bulgarian context, because the Constitutional design anyhow provides for executive domination over the legislative body, as it was already explained.

It is clear from this brief introduction that in the specific Constitutional model of Bulgaria not the Parliament controls the government but vice versa. Of course, possibilities for parliamentary questions, interpellations, votes of no confidence, investigative commissions, etc. do exist and the opposition often resorts to them. Every Friday, Bulgarian ministers report to the Parliament and the proceedings are televised. Quite regularly the opposition uses its right to initiate a vote of no confidence, the debates which are also televised (the most recent one was in July 2008 after the negative progress report of the European Commission). None of these measures could seriously threaten the stability of the government and its control over the legislative agenda of the Parliament in routine situations. For seventeen years, no vote of no confidence has succeeded to oust a government. There have been pre-term elections after the resignation of governments and one extraordinary case in which a government

fell after a vote of confidence procedure initiated by the Prime Minister (in 1992).

EU integration has not changed this division of power between the legislative and the executive. The adoption of the *acquis* was indeed a Herculean process and no one could expect Bulgarian Parliament to have carefully scrutinized each and every act. Yet the main agent of the legislative - drafting process in Bulgaria is the government: parliamentary groups bring draft laws only when they want to side-step the cumbersome process of coordination and consultation in the preparation of drafts within the executive. European integration did not change much this practice: the dominance of the government was simply confirmed. But it was already deeply entrenched in parliamentary life.

Yet there is one further, very important consideration, which needs to be taken into account at the outset of our analysis. A process of undermining of the trust of the people in the representative structures of democracy is under way, related to the rise of political populism (a movement which promises direct action and results to the public, without requiring from them loyalty to coherent party platforms, tedious and ongoing political participation, and sacrifices in the name of the common good). And this process may have indeed been influenced by the EU accession.

#### *Public Attitudes vis-a-vis the Parliament*

Bulgaria joined the European Union with one of the lowest levels of popular trust in its representative institutions. It is true that there was not a single significant time period during the transition, when the main State institutions enjoyed stable public support. Somewhat paradoxically, however, the falling confidence in the representative institutions became even more pronounced after the consolidation of the Bulgarian democracy. Especially since 2000, the most repetitive model registered in the surveys is the following: an outburst of expectations during the first months after the forming of new Parliament and government, followed by a collapse in popularity and low levels of trust that persists until the end of the office term.

It is important to stress, in this connection, that the attitude to the Parliament is not just negative but persistently critical. In April 2007 the Parliament scored 76% distrust.

Parliament	VIII.05	IX	XI	I.06	IV	V	VI	VIII	X	XII	III.07	IV.07
Positive	44%	38%	28%	24%	19%	18%	18%	21%	22%	20%	23%	20%
Negative	46%	53%	68%	73%	78%	78%	81%	77%	75%	78%	75%	76%
N/A	10%	9%	4%	3%	3%	4%	1%	2%	3%	2%	2%	4%

*Attitude towards Parliament, Source: Alpha Research Ltd., Nation-wide representative survey, N=1000, St. error: +/-3.2%*

There is also a clear tendency towards a downfall in the voters' turnout compared with the beginning of the transition - from 90.6% at the first parliamentary elections of the post-totalitarian time in 1990 to 55.76% at the parliamentary elections in 2005. The first elections for Bulgarian representatives in the European Parliament scored the lowest turnout in general elections until present - 28%.

These are disquieting facts. Disillusionment with democratic politics may have many sources. 'Closed' and unaccountable to society and the citizens Parliaments is certainly one of them. In the following text we will first look for an answer at the Constitutional and legal framework level - does it provide sufficient guarantees for 'open' Parliament, does it provide sufficient tools for holding our representatives accountable?



## ***II. Legislative and institutional framework for an open Parliament in Bulgaria***

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### ***Constitutional Right to Information***

The Constitution guarantees the right to opinion as a fundamental human and civil right, which is present in all forms of political liberty and is a precondition for its existence. This right is guaranteed by three articles in the Fundamental law (Art. 39, 40 and 41), of which of particular interest for the purposes of this report are the right to information and the freedom of the press.

The freedom of the press and the other mass media is guaranteed in Art. 40, 1: "The press and the other mass information media shall be free and shall not be subjected to censorship".

The following limits to this freedom are set by the Founding fathers: "(2) An injunction on or a confiscation of printed matter or another information medium shall be allowed only through an act of the judicial authorities in the case of an encroachment on public decency or incitement of a forcible change of the Constitutionally established order, the perpetration of a crime, or the incitement of violence against anyone. An injunction suspension shall lose force if not followed by a confiscation within 24 hours". (Art. 40, 2).

The right to information is protected by Art. 41, which stipulates: "(1) Everyone shall be entitled to seek, obtain and disseminate information. This right shall not be exercised to the detriment of the rights and reputation of others, or to the detriment of national security, public order, public health and morality". "(2) Everyone shall be entitled to obtain information from State bodies and agencies on any matter of legitimate interest to them which is not a State or official secret and does not affect the rights of others".

Despite the fact that the right to information is Constitutionally protected, the text does not explicitly mention any body that is duty bound to ensure the access of the citizens to this information. Surprisingly, in the most authoritative comments on the Constitution, written by the leading Constitutional law specialists of the country in 1999<sup>72</sup>, this article of the text is not separately discussed, even though the Constitutional Court already in 1996 was asked to provide authoritative interpretation of this and of other two articles (Art. 39 and 40) guaranteeing the right to freedom of opinion. The Court was asked for interpretation on an initiative by the President of the Republic, the prominent

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<sup>72</sup> Balamezov, Kirov, Tanchev, Karagyozeva -Finkova, Fereva, Nacheva and Stoychev (1999) *Konstitutzia na Republika Bulgariya. Komentar*, Ciela Publishing house, Sofia.



Bulgarian dissident, the philosopher Zhelyu Zhelev. The Decision of the Bulgarian Constitutional Court (BCC)<sup>73</sup> addressed precisely this issue, stating that „the right to seek and obtain information includes the duty of the State institutions to provide access to significant for the public interest information. The content of this duty should be legislatively determined. It includes the duty of State bodies to publish official information, as well as a duty to provide access to the sources of information<sup>74</sup>.” In addition, BCC confirmed the right of each citizen to seek and receive information without the need to prove he/she has a legal interest in obtaining it. It also confirmed the international standard that the right to information is the leading principle, while the limits on this right are the exceptions to this right, to be introduced only in order to defend other rights and interests.

It is important to note that this decision of BCC was also aimed at countering the majoritarian impetus of Parliament, which via its standing committee on the media intrusively interfered in its independent work. In fact, the initiative of the President was prompted by the active campaign of several NGOs and associations of Bulgarian journalists. As a result of the same decision of the Court, a new Law on the radio and the television was passed by the National Assembly in 1998, where the independence of the electronic mass media from political and economic pressure is guaranteed (Art. 8) , they are granted the right to receive information from the State institutions (Art. 13) , their freedom from censorship (Art. 9) is protected, etc. The creation of a special regulatory body - A Council on the Electronic Media - is envisaged in this law, whose task is to guarantee that this law is observed by the electronic media. The majority (5 out of 9) of the members of this Committee are appointed by the Parliament. Understandably, there were complaints that this provision of the Law ensures the control of the National Assembly over the media, even though Art. 20, 2 declares that “in its activity, the Council is guided by public interests, defending the freedom and pluralism of speech and information and the independence of the radio and the television.”

### *Right to Address Institutions*

A further fundamental human and civil right, characterizing the relation individual - the State is guaranteed by Art. 45 of the Bulgarian Constitution. “All citizens shall have the right to lodge complaints, proposals and petitions with the State authorities.” This right is crucially important for guaranteeing open and accountable representative institutions. Interestingly, after the adoption of the new Constitution, no new law was adopted to provide the necessary regulation

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<sup>73</sup> Decision of the BCC № 7 from June 4, 1996, on Constitutional case № 1/1996.

<sup>74</sup> *Ibidem*.

for the exercise of this right. Rather, the socialist Law on the Proposals, Signals, Complaints and Requests from 1980 served this purpose, with just one amendment to fit the post-communist Bulgarian Constitution introduced in 2000. This relic law has been repealed altogether in 2006 by the new Administrative Process Code. Its promulgation is an important step in developing more transparent and accountable administration, guided in its work by the democratic principles of accessibility, publicity and transparency. Quite naturally, the right to issue complaints, Constitutionally protected by Art. 45, is included in this Code, since this right can be characterized as a procedural precondition for the realization of other fundamental rights and lawful interests of individuals.

Going a step backwards, let us stress that, though the BCC decision from 1996 was extremely important as an authoritative interpretation of the Constitution and of the protected rights of opinion and access to information, it could not by itself produce any real change in the institutional practices of the country. It was not sufficiently popularized in the media, at least not enough to neutralize the natural effects of lack of interest in the complex matters settled by the BCC, especially against the background of the severe economic and political crisis in the country in 1996/1997.

#### *The Law on Access to Information*

To remedy this, in 1997 several NGOs in the country - the Bulgarian Helsinki Committee, the Program Access to Information (AIP), the Bulgarian media coalition<sup>75</sup>, other organizations of journalists, lawyers and others, started a strong advocacy campaign for drafting and adopting of a Law on Freedom of Information. As a result of the pressure exerted by civil society, the Law on the Access to Public Information was adopted in mid - 2000. Yet, in it, very few of the recommendations and critiques, resulting from numerous public discussions, round tables, conferences in the civil society<sup>76</sup>, were taken into account. Nevertheless, although not perfect, the law provided a procedure to be followed by citizens in exercising their Constitutionally guaranteed rights. Public information is defined as "all information, related to the public life in the Republic of Bulgaria, which allows citizens to form their own opinion on the activity of the obligated by this law bodies" (Art. 2,1). Access to personal data and information is excluded from the scope of application of this law - though protection of personal information is mentioned among the fundamental

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<sup>75</sup> CLS has sent to all of them the standardized questionnaire, developed within the framework of this project, and they have filled it in, providing valuable information for the purposes of this report.

<sup>76</sup> For a detailed account of the thorny path leading to the adoption of the Law on Access to Public Information [http://www.aip-bg.org/pdf/aip\\_10years.pdf](http://www.aip-bg.org/pdf/aip_10years.pdf).

principles in exercising the right to freedom of public information (Art. 6,1). The Law does not provide definition of personal information, however, an issue that is separately regulated by the Law on Personal Data Protection, in force from January 2002<sup>77</sup>. In agreement with the decision of BCC from 1996, the Law on access to public information did not demand from citizens to prove they have lawful interest in obtaining this information. The other fundamental principles in realizing the right of access to public information are: "openness, reliability and comprehensiveness of the information, guaranteeing equal conditions of access, protection of the right, guaranteeing legality in searching and obtaining it, defense of personal information and guaranteeing the security of the State and society" (Art. 6,1 of the Law). The access to public information can only be limited when the requested information is classified (access to classified information is separately defined and regulated by the Law on the Protection of Classified Information from April 2002<sup>78</sup>) or in case of a State or other official secret, as defined by law (Art. 7, 1).

This last provision of the law on the limits of access to information has been a constant source of contention, with the grounds for limiting it being constantly challenged by civil society's organizations in the country. Thus a series of recent amendments of the Law introducing further limits to this right were challenged by a wide coalition of NGOs, lead by AIP, which has filed a series of opinions and has supported a draft amendment to the Law, better protecting the right of access to information by providing wider definition of the duties of the State bodies to actively provide information to the public, by widening the list of the duty bound institutions to include the local branches of the institutions of the central administration and by excluding certain grounds (ex. confidentiality of commercial information used in procurement procedures) for limiting the access to information, etc<sup>79</sup>.

The Law on access to public information also determined the duties of the State bodies and the local administration to release public information that is or could be of public interest, can remove a threat to the life, the health or the safety of the citizens and their belongings, and rectifies a misinformation that affects significant public interests. In all those cases, the relevant authority has to release it not on demand, but has to publish it on its own initiative and to actively ensure it is available to the public (Art. 14, 1 of the Law). The access to

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<sup>77</sup> State Gazette № 1, from January 4, 2002.

<sup>78</sup> State Gazette № 45, from April 30, 2002.

<sup>79</sup> The most recent opinion of AIP in support of the new draft amendments was filed with the Standing Parliamentary Committee on State Administration in June 2008 (available at [http://www.aip-bg.org/pdf/stanovishte\\_pdi\\_180608.pdf](http://www.aip-bg.org/pdf/stanovishte_pdi_180608.pdf)).

such information is open (Art. 17) and free of charge (Art. 20), though some minimal fees, not exceeding the material costs for providing the requested information, can be levied.

The Law also establishes clear administrative procedures for seeking information and sets clear dead-lines for the State and local government institutions to provide it - as a rule it is 14 days, though extension is possible for the purposes of obtaining permission for use of information from affected third parties. These institutions are also obliged to set a separate department, or at least mandate an official to deal with access to public information in each of the public institutions, duty bound by this law. In addition, the Minister of State Administration and the Administrative Reform is under a duty to annually publish a summary report on the administrative measures taken and the extent to which the State institutions comply with this law.

Two articles in the law deal with the access of citizens to official information of the mass media. These are aimed to ensure that citizens can form their own opinion, avoiding (attempts of) manipulation and misinformation by the mass media. These provisions are a unique feature of the Bulgarian law. A further strength of the law is that it also sets clear administrative and penal procedures to be taken against administrative bodies failing to provide the citizens access to public information.

Despite these significant achievements, the law had some drawbacks as well - the grounds for the limits on the access of information - such as national security and protection of individuals, the State and other official secrets were not clearly defined in this law, and their definition and legal regulations was left scattered in diverse legislative acts. This hinders the attempts of citizens to obtain information, since many institutions follow the secretive traditions inherited from the authoritarian State and successfully hide behind the back of such regulations (a much easier task in the case they are numerous and scattered in diverse acts).

The response of the civil society watch dogs such as AIP, accordingly, is to provide legal advice and help citizens find their way through the maze of administrative and legal procedures in obtaining information, as well as to launch lawsuits in cases of illegal denial of access. This and other civil society organizations were thus vigilant after the adoption of the law, providing monitoring for its implementation by the administration and the Courts.

One of the measures of AIP in this respect is publishing annual reports on the State of the Access to Information in the country, from 2000 onwards. AIP and

its partner organizations are not only monitoring the implementation of the law, providing legal advice and assistance to potential litigants, but are also constantly monitoring the legislative activity related to the right to information, and are launching strong public campaigns against negative developments in the field. Thus in 2007 amendments to the law were discussed in the Parliament, hastily initiated by 3 MPs (an investigation by a leading journalist in the prestigious analytical weekly 'Kapital' revealed, that the amendments were initiated by the Cabinet, but in order to speed up the procedure, were filed with the Parliament by the 3 MPs) under the guise of incorporating in the Bulgarian legislation of the EU Directive 2003/98/EU on the re-use of public sector information. After a strong pressure from civil society groups, the most debilitating of the proposed amendments to the law were not accepted, while some positive improvements (based on the analysis of the practice of law's implementation) were introduced.

In July 2008 new positive amendments (refining the regulations on commercial secret limitations to access to public information, extending the scope of the duty of the institutions to actively publish information, guaranteeing the availability of the public information on the internet, etc) were voted in the Committee on civil society and media of the Parliament, and will hopefully be approved by the Parliament by the end of the year.

### *Parliamentary Rules on Transparency and Openness*

How does the Parliament itself respect the Constitutionally protected right of access to public information? Concerning the transparency and the openness of the Parliament, the Constitution says that "Sessions of the National Assembly shall be public. The National Assembly may by exception resolve to hold some sessions behind closed doors<sup>80</sup>", and that "Voting shall be personal and open, except when the Constitution requires or the National Assembly resolves on a secret ballot<sup>81</sup>." The Constitution mandates that "The National Assembly shall be organized and shall act in accordance with the Constitution and its own internal rules<sup>82</sup>." The *Rules of organization and procedure of the national assembly* (of the 40th National Assembly) detail these provisions. Thus Art. 37 enumerates when the plenary sittings of the Parliament are behind closed doors: when important State interests demand it, when documents containing classified information are discussed, and the decision to hold closed sessions could be taken on an initiative by the Chairman of the National

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<sup>80</sup> *Ibidem*, Art. 82.

<sup>81</sup> Art. 81, 3.

<sup>82</sup> *Bulgarian Constitution*, Art.73.

Assembly, by the Cabinet, or by 1/10 of the MPs. The records from closed sittings are classified information, yet the decisions are announced publicly<sup>83</sup>.

The open sittings are broadcast live by the Bulgarian national radio on a special frequency, covering the entire territory of the country and are also covered by summary reports on the Bulgarian National television. A live broadcast of the sittings of the Parliament on the national radio and the national television may be decided by the Parliament. Journalists have access to the open meetings of the standing committees and to the plenary sittings, though a special procedure is followed for allowing access of journalists for a full coverage of Parliamentary life. Shorthand (verbatim) minutes from the plenary sittings are drawn up, and they are to be published within 7 days on the Parliament's website<sup>84</sup>. This last requirement was included in the Rules only by the 40th National Assembly (and it was initially opposed by the Reporting Committee but, after a debate in the plenary sitting, it was almost unanimously approved by the MPs).

The Rules also determine that the sessions of the meetings of the standing committees are open and members of the public may attend them in compliance with the admission arrangements to the Parliament building<sup>85</sup>. The committees themselves may decide that some of their sessions are held behind closed doors<sup>86</sup>. Three of them - the Foreign Policy Committee, the Defense Committee and the Security and Public Order one (and their respective sub-committees) hold closed sessions for the public - though those committees may decide some of their sessions to be public<sup>87</sup>. The MPs have also decided that the standing committees, by exception, may hold their open meetings outside the Capital.

The standing committees prepare reports on their activity, where the decisions taken are presented, together with the pro and con opinions expressed. The majority with which the decisions are taken is indicated. The reports on the public meetings of the Standing committees are public and accessible according to the procedures and available on the website of the National Assembly<sup>88</sup>. For the meetings of the standing committees, the requirement is to take summary minutes, and only for the meetings of a standing reporting committee (i.e. one that reports a draft law to the plenary sessions of the

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<sup>83</sup> *Rules of Organization and Procedure of the National Assembly*, State Gazette No 69/23.08.2005, Art. 37, 1, 2, 4, 5.

<sup>84</sup> *Ibidem*, Art. 38, 1, 2, 3, 4, 5.

<sup>85</sup> *Rules of Organization and Procedure of the National Assembly*, Art. 25, 1, State Gazette No 69/August 23, 2005.

<sup>86</sup> *Ibidem*, Art. 25, 3.

<sup>87</sup> *Ibidem*, Art. 25, 4.

<sup>88</sup> *Ibidem*, Art. 29, 2, 3.

Parliament) shorthand (verbatim) minutes are drawn up, signed by the Chairperson of the committee and the stenographer. They are to be posted on the National Assembly website within 10 days of the committee's session. Interestingly, the text on posting this info on the website is only included in 2007, and the proposal by MPs to include this text (which was triggered by advocacy campaign by NGOs) already in the beginning of the work of the 40th National Assembly in 2005 was voted negatively<sup>89</sup>. The records of the closed meetings of the committees are archived and access to them is regulated in compliance with the procedures of the Classified Information Protection Act<sup>90</sup>.

Surprisingly, nowhere in the Rules is explained how can one access the records of the open plenary sittings with all the accompanying documents, including the printouts from the electronically performed nominal vote of the MPs. Nor is there any explanation on that matter to be found on the website of the Parliament. It only says that the public has such access, according to the set procedures, but whether these are obviously one should find out for oneself. One finds an information about the procedure for visiting the two libraries of the Parliament (there are two buildings of the National Assembly, with two libraries), but nowhere is written that all these documents, including the printouts of the electronic vote, are accessible for the public there. It is indeed possible to read the documents on paper in the library of the Parliament<sup>91</sup>.

The procedures for the access to the open plenary sittings and open meetings of the standing committees are also vaguely formulated in the Rules "the citizens may be present at the meetings of the committees in compliance with the general procedures for access to the National Assembly", Art. 25,1. One finds information on the site only concerning citizens' access to plenary sittings. Sending a written request to the Secretary General 7 days in advance of the planned visit (by fax or electronically) is required. Interestingly, there is a strange requirement that upon entering the Parliament building, one not only shows his ID, but also has to have sent in advance his Unified Citizen Personal Number - this obviously limits the access to the sessions for any foreign nationals (who have no such number), without there being in the Constitution or

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<sup>89</sup> One learns this by reading the shorthand minutes of the debates prior to adopting the Rules in 2005, available on the Parliament's site at

<http://www.Parliament.bg/?page=plSt&lng=bg&SType=show&id=24>

<sup>90</sup> *Ibidem*, Art. 30, 1, 2, 3.

<sup>91</sup> In order to check whether it is possible to receive such information, I asked this question using the on-line form, provided by the press-centre of the National Assembly. Indeed, the response I received was swift and detailed, yet it does not remedy the flow that this information is not readily available on the site itself. Citizens (and even some political science colleagues, whom I interviewed on this matter) have little idea about this opportunity.

the Rules any such requirement of having Bulgarian citizenship in order to attend the open sittings. Concerning visits to the open standing committees' meetings, on the website such an opportunity is not mentioned, though the Rules, as mentioned above, allow such access. Again, one needs to already know that one has this right, in order to find out how to exercise it.

One finds the working program of the Parliament as well as the agenda for the following week's meetings of the standing committees and the plenary sittings on the website, yet the agenda is often posted late, and some of the standing committees do not publish at all the agenda for their meetings. Surprisingly, there is no regulation in the Rules, obligating the Parliament to post the draft laws on its site. Most of the drafts are nevertheless posted there, though occasionally quite late for the public to avail itself of all the relevant information.

The vote of the MPs is open and nominal, though on a request of a parliamentary group or of a 1/10 of the 240 MPs, a decision to take a secret vote may be reached. Very rarely had this opportunity been used by the MPs<sup>92</sup>.

The open vote may be taken by the computerized voting system; by showing of hands; by roll-call, by calling the names of Members of the National Assembly with replies of *yes*, *no* and *abstained*; by signatures; or roll-call, using the electronic system whereby the Members' names and votes are shown on screen, through the computerized voting system. Typically, voting is electronic. The printout of the voting results from the computerized system are attached to the full shorthand records of the sittings of the National assembly, together with an explanatory memorandum, the text of the bills, resolutions, and proposed amendments<sup>93</sup>. These are available to the public in the library of the Parliament.

Civic participation in the legislative process is limited by the Bulgarian Constitution. Even though the Constitution declares that the people is the source of all State power (which they can exercise directly and through the bodies, set in the fundamental law), it nevertheless gives a right to legislative initiative only to each of the MPs and the Cabinet, and not to any number of citizens. This fact determines the character of the advocacy campaigns for changes in the legislation, followed by civil society groups in the country, who focus their activities on work with the MPs and the Cabinet. A lot of advocacy

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<sup>92</sup> The Parliamentary groups of the Bulgarian Socialist Party and the Movement for Rights and Freedoms tried to use this opportunity unsuccessfully in order to form a minority government after the 2005 general elections. As a result of this failed attempt, a grand coalition of three parliamentary groups was formed to support the coalition government of Sergey Stanishev, still holding the executive power in the country. Both his nomination and the Cabinet were voted openly.

<sup>93</sup> *Ibidem*, Art. 60, 2.



work is done at the level of experts of the ministries, and it is typically done at the time when a certain legislative act is prepared and/or coordinated between the different institutions.

In a similar vein, according to the Constitution's Art. 84 (5), it is the National Assembly alone which decides to hold national referendums (where some legislative issues can be popularly voted upon). According to the enacted in 1996 Law on Consulting the People<sup>94</sup>, holding a referendum could be initiated by no less than a quarter of the MPs, by the President or by the Cabinet. Thus, a referendum cannot be called on a popular initiative, nor its results are valid if less than half of the eligible voters have participated. Not surprisingly, there has been no national referendum in Bulgaria, though in principle and in the books such possibility exists. There has been just one successful local referendum in Bulgaria, in a municipality village of Novi Han, and it was only earlier this year (there have been several failed local referendums, because of lower than 50% voters' turnout). Bulgarians were also not asked by the legislator whether they would like their country to join the EU.

There are, in sum, serious impediments to bringing Art.1,2 of the Constitution to life - the entire power of the State shall derive from the people. The people shall exercise this power directly and through the bodies established by this Constitution."

In an attempt to remedy this serious flaw, in July 2008 the Parliament voted, on a first reading, a new draft "Law on Direct Participation in Government", according to which 150,000 citizens will have a right to demand a referendum. Holding the referendum will become obligatory, when 350,000 voters have signed the petition and demand it. In addition, 1/10 of the MPs and 1/10 of all municipal councils in the country will also have this right to initiative. A decision taken by a referendum would also not need further approval to take effect, and needs not to meet the threshold of 50% voter turnout in order to be valid. In sum, if adopted (and there is a consensus in the society and among the ruling elite of the country that this should happen), this law would definitely be a leap forward in improving the State of direct democracy and the citizens' involvement in the government.

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<sup>94</sup> State Gazette No 100/Novembre 22, 1996.

### ***III. Relevant Stakeholders' Assessment on the transparency of the Bulgarian Parliament***

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The legal framework sets the necessary conditions for the transparency and for the accountability of the Parliament. Yet it would remain an empty box, were it not to be used actively by the civil society organizations, the media, and ultimately - by the citizens. Two more sets of indicators were included in the assessment of parliamentary openness: the relevant stakeholders experiences and opinions and the actual practice at the level of the Parliament, based on questionnaires sent to NGOs, trade unions, business associations and media. On the basis of interviews we also assessed the practice of access to information from the national Parliament.

The relevant stakeholders include: NGOs, trade-unions, business associations and mass-media.

We sent the standardized questionnaire to 38 NGOs (10 of which local NGOs) , 9 trade unions, 10 business associations, 23 mass-media representatives (of which 10 were local newspapers and radio stations). We have collected 18 replies from NGOs, 2 from trade unions, 1 from business associations and 3 from mass-media.

The strikingly low response rate for the media could be explained by the open nature of some of the questions: one of the interviewed journalists explained to me that the questionnaire was confusing, and may be viewed by her colleagues as too time consuming. She also confessed that often she leaves similar questionnaires unanswered, because of doubt to their practical use and because of lack of time.

One further important detail to mention here is that we have collected the filled in questionnaires in electronic form, not by phone, in order to be able to document our results. To ensure a higher response rate, the questionnaires were re-sent to those who did not responded, with a request for sending back e-receipt that the messages have been opened. About 50% were read, yet the response rate was still not up. Concerning particularly the journalists, they do not seem to see serious problems with Parliament's transparency, though they are occasionally irritated by limited number of accredited journalists with full access for covering the entire activity of the Parliament. Such attempts have been made by the administration of all the Parliaments and these attempts have met a vehement resistance from the part of journalists.

The extremely low response rate from the business organizations also warrants explanation. Judging from the very detailed response of the single business

organization that bothered to reply - the Bulgarian Industrial Association<sup>95</sup> (it is the most influential in the country, participating in diverse councils and commissions; it is the best represented abroad as well - it is a member of the most prominent and influential international business organizations), they see very little problems with Parliaments' transparency, have good working relations with the administration and the committees in the Parliament, work with ½ of all the standing committees, and participate in the elaboration of 78% of all legislative acts. Furthermore, the representative business organization, together with the trade unions, are parties of the National Council for Tripartite Cooperation, which according to the Labor Code<sup>96</sup>, are to be consulted by the Cabinet (Council of Ministers) on any draft laws it initiates that concern the business - labor relations, the social security issues, etc. Without such consultations, the draft laws cannot be filed with the Parliament. Overall, these organizations have at present relatively easier access to information and opportunities for influencing the work of the Parliament than the rest of the stakeholders and probably do not find much practical value in participating in initiatives to improve the transparency of the Parliament.

From all the stakeholders that returned our questionnaires, just 3 local NGOs (12,5%) declared to have no experience in working with the Parliament. Most probably the percentage of the NGOs among the initial sample which have no such experience is much higher - part of those, who did not have any relevant experience to respond to our questions, simply may not have bothered to read them. The predominant majority - 12 (or 67%) of those that returned the form, quoted at least three relevant experiences working with Parliament; 4 (22%) quoted two such experiences, and just 2 (11%) - one such.

#### *General Interest in the work of the Parliament*

From the stakeholders that have responded to our questions aimed at evaluating their general interest for the Parliament's activities, 10 (48%) indicated the highest interest (score 5), 1 evaluated it as 4 ½, and 3 (14%) - as the medium score - 3 (on a scale from 1- *no interest*, to 5 - *greatest interest*). Seven of the stakeholders (33%) did not at all indicate any response to this question. This high incidence of no response makes our average result of 4,53 an unreliable indicator for the interest of the stakeholders' in the Parliament's activity.

In an interview with a representative of one of the NGOs that did not answer this question, we were told that the question on the general interest in the

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<sup>95</sup> <http://www.bia-bg.com/>

<sup>96</sup> *Labor Code*, Art.3 (2) (amended) State Gazette No 120/2002.

Parliament's activities is very confusing, since it is not clear what someone should compare this interest to in order to evaluate it. Indeed, many of the respondents have understood it as a request to give a score to the different parts of the description with regards to their general interest in the Parliament's activity (which is the immediately preceding question). Thus, some of the respondents gave the highest score (5) to their interest in the work of a standing committee whose work was directly connected to the mission of their organization, and giving a smaller score to other aspects of their interest. Others evaluated their interest in Parliament's activity as against their other interests, etc.

### *Interest in Specific Parliamentary Activities*

Concerning the activities (59 were quoted) of the stakeholders in relation to their work with the Parliament, we have distinguished 5 different types - advocacy campaigns (17 such activities quoted), monitoring (9), consultations given to legislative standing committees (18), popularizing the information about new legislative acts and their implementation (7), organizing events with the participation of MPs and establishing working contacts with MPs (8).

One should mention in this context the very active involvement in work with the Parliament of the Access to Information Program, one of the most prominent NGOs in the country.

In response to our questions, AIP have quoted 7 activities of their organization with Parliament just for the last year and a half. Among them are: an advocacy campaign "Hands off the Law on Access to Public Information" against the attempts in 2007 to amend this act (it included launching a petition and organizing a large coalition of NGOs, jointly working against these changes) and a new advocacy campaign for introducing positive amendments to the same act in 2008. Most of the quoted activities include the elements of more than one type of such activity. For example, the consultations they have provided to the Standing committee on corruption on amending the quoted above law are part of their advocacy campaign in support of it. Their work on drafting Internal Rules of the Parliament in implementation of the Law, are part of their attempt to help to implement and popularize this act, etc. So, the above classification should be viewed with a pinch of salt!

Another sphere of legislative activity in which NGOs in Bulgaria are very active, is the environmental policies. Thus the NGO Za Zemyata<sup>97</sup> participated (on their

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<sup>97</sup> <http://www.zazemiata.org/>

own request, they were never invited by the committee) in the debates in the standing committee on the energy on the Law on renewable energy sources. Yet out of their 7 proposals, just 2 (and not the most important ones) were accepted. The organization was also disappointed that access to important information was constantly withheld from them - concerning illegal construction work at the sea side or concerning the contract agreements signed between Bulgaria and Russia in the energy sector.

Another very active NGO, interviewed by us is the Balkan Assist<sup>98</sup>, working to support the citizen's involvement in government. It has managed (through their contacts with MPs) to file 2 draft laws - in the previous Parliament it was a draft law for amending the Law on consulting the people (it has reached the very last stage of vote in the plenary sitting, yet was not adopted) and in the current Parliament - they have managed to push through three standing committees an entirely new draft Law on Direct Citizen Participation in government, which was also approved on its first reading in the plenary sitting. Their campaign's strategy was so well-targeted (and well popularized in the media), that they have managed to win the support of the Parliament Chairperson, who agreed to put the law on the working agenda of the Parliament and delivered on his promise promptly (in just a week time!).

Another success story, though on a much smaller scale, was the campaign carried out by the Bulgarian Center for Non-for-profit Law<sup>99</sup> to retain the tax breaks for donors, which were threatened by the introduction of the flat personal income tax for 2008.

It is encouraging that local NGOs also try to launch advocacy campaigns for certain legislative initiatives. Thus the NGO Center in Razgrad<sup>100</sup> filed proposals for amending the Law on Protection from Home Violence. The success of the organization at the local level with monitoring the local Court's practices has boosted its self esteem and has encouraged it to cast its view on the central legislative power. However, the experience of such local NGOs with participating in the activities of the Parliament are not always positive: some of them feel excluded or not welcome, find the standing committees at best formal in their approach, and more often even hostile, view the attitudes of the majority in the Parliament as often arrogant and cynical ("they are ready to give generous promises while in opposition, yet when it comes to delivering - i.e. when they are in majority, they forget them and become unaccountable" is a common complaint").

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<sup>98</sup> <http://www.balkanassist.bg/>

<sup>99</sup> <http://www.bcnl.org/>

<sup>100</sup> <http://www.ngo-rz.org/>

A summary of this perception was provided by a representative of the prominent environmentalist NGO (always in the head-lines of the newspapers) Zeleni Balkani<sup>101</sup>, according to which “the problem is not so much with the lack of transparency, but with their “un-touchability”. The comfortable majority often leads some MPs to become detached from the citizens, a problem that the Parliament does little to remedy by providing more opportunities for easier access of citizens to standing committees meetings, easier access to the shorthand minutes of these meetings (which would necessarily have a disciplining effect on the behavior of the MPs), easier way to track the nominal votes of the MPs at both the committees and in the plenary sittings, etc. These complaints were constantly repeated by our respondents as the main impediments to citizens’ access to Parliament’s work and to civil engagement.

A very interesting and telling for the purposes of our report project was developed by the Bulgarian PolSci Center in Sofia, which in the period 1999 - 2002 performed a Students’ Watch<sup>102</sup> over the activity of some MPs. The aim of the project was to raise the transparency of the Parliament’s activity by evaluating the activity of 1/10 of the MPs - 24 of them. They have been monitored by Sofia university law, sociology and political science students, based on 4 criteria - participation in legislative activities, contacts with citizens, media exposure, and contacts with NGOs. The campaign was extensively covered by the media, yet the students (over 70 over the entire period) felt that the MPs used their campaign as a PR strategy rather than to truly get closer to the citizens. The representative of this organization, whom we interviewed for the purposes of this report, stressed that it was often difficult to tell apart the PR aimed actions of the MPs from their genuine interest in transparency and accountable work for the benefit of the citizens. He warned our team to be particularly sensitive to the dangers of turning recommendations for improving the transparency of Parliament, when implemented, into handy PR tools for skilled politicians.

To continue with the analysis of our data, most of the stakeholders are interested mainly in the acts and documents of the Parliament (14 declare such interest), in the debates of the standing committees (10), in the nominal vote of the MPs (5), and in the debates of the plenary sittings (4). Some are interested in improving the access of the citizens to the activities of the Parliament, including that of the standing committees (2) and the constituency activities of the MPs (3).

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<sup>101</sup> <http://www.greenbalkans.org/>

<sup>102</sup> <http://www.psc-bg.org/psc/bg/pastprojects.html?pageID=6>

### *General transparency scores given by respondents*

The general score of the transparency of the Parliament, according to the stakeholders' evaluation on a scale from 1 to 5 is 3, 19 (yet, even here one of the respondents did not answer that question). He found it meaningless, since no criteria for evaluation or comparison with other public institutions were provided, as he explained his reasons for not responding to this question in detail in the form).

The low incidence in some of the categories (we only have 6 local NGOs that bothered to respond, of which 3 did not respond to his question since they had no interaction with the Parliament at all; we have just 1 business organization and mere three mass media, of which just one is local, etc.) does not allow to draw an informative chart that could reliably indicate differences in the perceptions of the different types of stakeholders on Parliaments' openness and transparency. The respondents were also asked about their experience in accessing information from/about Parliament and MPs. All the stakeholders mentioned the website as the main source of such info, followed by the mass media (half of them), personal direct contacts with MPs and the standing committees' experts (around 45%), the Press Centre of the Parliament, etc.

The respondents were quite critical with regards to the speed with which info is updated on the website of the Parliament - delayed posting of working agenda, minutes and draft laws. This was stressed as the major problem with the openness of the Parliament by the representatives of the mass media who admitted that they had to use the site or the official channels of the PR department and the press center of the Parliament for accessing the necessary for their daily work information (they would be kicked out of work soon because of constant delays and inadequate information). As a rule, they use informal channels for gaining access to information, including direct contacts with MPs and experts. Another periodic complaint by the journalists against the rules of entry to Parliament is that they are used as an excuse to limit their free movement among the MPs, their access to even the open standing committees' meetings, etc.: each Chairperson of the Parliament has tried to "discipline" the journalists and met strong resistance.

The volume of info in principle posted on the website is again very limited: the working agenda for all the standing committees are not posted, no shorthand minutes of the meeting in all the standing committees are drawn up, even less - posted, not all draft laws are posted, etc.

Most importantly, the new proposed amendments to the draft laws between the first and second reading in the plenary sittings are not published at all, nor are they easily available on request (the shorthand minutes are prepared as a rule in 7 days after the sitting, but often this process takes more time) which is critically important for ensuring the openness, transparency and for encouraging the civic involvement in the legislative process. The archives of all aspects of the legislative activity of Parliament are also not available on the website, the print outs of the nominal votes in both the plenary and the standing committees - too.

The access to information using the official procedure according to the Law on Access to Public Info is used by our respondents, yet it is deemed cumbersome, with no settled internal rules and procedures for the implementation of the Law inat the level of the work of the Parliament itself. In general, the bad secretive practices and the slow, formalistic and unhelpful bureaucracy were again among the main impediments for gaining access to the Parliament work, according to our respondents.





#### ***IV. Conclusions and recommendations for a more open Bulgarian Parliament***

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##### *Public Trust in the Parliament*

In order to put accountability mechanisms in practice, there is a need for an agent. In the case of the Parliament, this could only be the sovereign - the Bulgarian citizens who are the source of all political power in the country. Obviously, if the agent has no interest in exercising its agency to make use of the accountability mechanisms, there is little sense in talking about the openness and accountability of the Parliament. That is why we have to start our analysis in this last section by addressing the issue of the public interest in Parliament activity.

The results from a series of representative surveys, conducted by the sociological agency Alpha Research in 2002, 2006 and at the end of 2007<sup>103</sup> show, that the level of trust in Parliament is critically low. Thus just 1% declared to fully trust the Parliament in 2002 and this figure declined to reach 0,5% in 2007). No trust at all in the main representative institutions of the country declared almost half of the Bulgarian citizens (46%, 42% and 49% for the respective years.) On a scale from 1 to 10, where 1 is no trust at all, and 10 - full confidence, the average is again critically low - 2,31, 2,48 and 2,29, respectively.

Interestingly, this lack of trust in the Parliament is not accompanied by readiness to abandon the parliamentary democracy in the country and substitute it with stronger president, stronger leader, one-party rule or dictatorship. On the contrary, support for such proposals is steadily decreasing which warrants calling the State of development of the representative democracy in the country - consolidated yet frustrated democracy<sup>104</sup>.

Though representative democracy is "the only game in town" in the country, its quality is rather low and the explanations should be sought at least in two directions. The first is the very low and declining popular interest in political decisions. Thus in 2002 only 10% declared they were not interested in the decisions of those that govern the country, yet in 2006 it was already 18%, to reach by the end of 2007 the alarming 27%. One should not be lulled by arguments that this is the natural effect of normalization and that this passivity

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<sup>103</sup> Within the Framework of the Projects of CLS "State of Society" I, II and III, supported by OSI- Sofia.

<sup>104</sup> Smilov, Daniel (2008), *Partii i frustrirana demokratsiya*, in *Sustoyanie na obshtestvoto III*, OSI Sofia, forthcoming.

is a sign that people have gained considerable autonomy in their life from the encroachments of the State and need not to constantly monitor its activities and performance.

There may be a direct causal link between the low interest in politics and the low quality of the democratic institutions in the country - when not monitored, they tend to degenerate, become less open, less accountable and less responsive. Yet the quality of the institutions may itself be part of the explanation for the declining interest in politics - secretive practices, formalistic bureaucracy, cumbersome or altogether lacking procedures may discourage some of the less active citizens to be interested in the decisions of such institutions. Certainly, to understand the present situation, one should work from both ends.

Yet opening up the Parliament, making the work of the MPs more transparent, is the first necessary step to bringing people back to politics by winning their trust in the main representative institution of the country. This process has begun, as already indicated in the text above. Most meetings of the Parliament are open, the working agenda is posted on the site (though access to some of the standing committees is not easy, because publishing the agenda is delayed, one need to send a request for attending a meeting 7 days in advance, etc), the vote is open (rarely a secret vote is taken) and nominal (though standing committees that are not leading with respect to a legislative act, are not obliged to keep detailed record of it), votes are archived, yet access to the printouts of the electronic voting is difficult. There is also detailed information on the legislative activity of the Parliament, with a database, where all draft laws could be searched by several criteria - keyword, date of filing, who filed it, reporting committee and code number. There is also summary statistics on the legislative activity of each of the Parliamentary sessions: how many draft laws were filed, how many were adopted, etc.

All these are positive developments, yet much leaves to be desired - firstly, these developments are not sufficiently popularized, secondly, they do not go deep enough. As a matter of principle, all information concerning the Parliament's activity, which does not concern State secret and other classified information, should be available on the website. Arguments of the sort that this is technically a very ambitious and expensive task cannot be taken seriously, when at stake is the popular trust in the main representative and legislative institution of the country.

Special attention warrants the individual work of the MPs - their individual voting record, their legislative initiatives and other activities in the standing committees

and in the plenary sittings, and their work back in their constituencies. Even their mere presence in the Parliament's meetings is not reliably recorded - often they register and leave almost immediately, mandating a colleague to vote with their electronic voting cards. There are provisions in the Rules of the Organization of the Parliament that explicitly prohibit such irresponsible behavior on the part of the MPs (by attaching a monetary sanction to it in addition to the moral blame) but, to this point, no single Chairperson of Parliament was able to solve the problem of voting with many cards by a single MP. The current Chairman, Mr. Pirinski has taken it as his personal challenge to ensure the compliance with the rule against voting with someone else's card, but to with no results up to this point.

Interesting in this respect are the attempts of journalists from the central media to obtain official information from the National Assembly's administration on the income of an MP, infamous for his absence from the Parliament<sup>105</sup>. The journalists tried to find out what was the amount received by him as an MP salary for a certain period and what were the fines for his constant absence. The negative response to their official request to access this public, in principle, information was motivated by the administrative head of the Parliament thus: "a personal data of a third party are involved". One should nevertheless point out, that the salaries of the MPs in the Bulgarian Parliament are determined by the internal Rules and depend on the rate of the salaries in the public sector, i.e. they are public and known. There is also a requirement, that all high ranking State officials, including the MPs, each year publicly declare their assets; the register is public and available on the internet starting from 2006. From 2007 the MPs had to also declare that they agree their bank accounts and declarations to be checked.

Yet it is very difficult if not impossible to receive information about another aspect of the MPs work - back in their constituencies. Even though according to the Rules for the Organization of the Parliament, MPs have to meet and work in their constituencies on Mondays and Tuesdays, they are not obliged to submit a report on their activities there, nor a record of these activities these is kept. It is interesting to note that the MPs receive a small amount for maintaining their personal websites. Yet most of these sites contain just a photo and a very brief bio note. These sites could be used much more effectively, more information should be posted there, such as the office hours of the MP in the Capital and at

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<sup>105</sup> The MP is Ahmed Dogan, the leader of the Turkish minority party, the longest surviving leader of a party in CEE after 1989. For the last year, Mr. Dogan has been in Parliament only three times, and he has received fines for his absence. Yet during the last 7 years he has purchased considerable assets, and as he claims -from his salary alone.

his/her constituency, a list of the staff working for the respective MP, a list of the legislative initiatives, a list of draft laws he/she is working on, the questions he/she has raised at the parliamentary control over the Cabinet sessions, etc.

The already implemented measures have not been sufficient to dissuade the general public that “MPs in Bulgaria come to the Parliament poor and leave it very rich”, serving their own partial rather than the public interest. More transparency in the work of the MPs - a public register of their experts and staff, for example, would shed more light on it. Public reports for the activities of the MPs in their constituencies would also help. In sum, more sustained efforts to improve the transparency of all aspects of Parliament’s work, not least important - that of the individual MPs, are needed to boost the trust of the citizens in this central institution of representative democracy.

**Transparency, accountability and civic participation**  
**GEORGIA**

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## ***I. Argument***

The origins of the first Georgian Parliament are connected with a story that sounds a bit like a legend. According to this, the history of the Georgian Parliament dates back to the twelfth century: predating the Magna Carta (1215) in England, an idea of limiting the royal power and creating a parliamentary - type body of government was born among the aristocrats and citizens in the 12th century Kingdom of Georgia. The first Georgian Parliament was to be formed of two "Chambers": *Darbazi* - assembly of aristocrats and influential citizens who would meet from time to time to take decisions on the processes occurring in the country and *Karavi* - a body in permanent session between the meetings of *Darbazi*. But the confrontation ended in the victory of the supporters of unlimited royal power. The leader of the rebellious aristocrats, Qutlu Arslan was arrested on the Queen Tamar's order<sup>106</sup>.

In the Czarist Russian Empire, Georgians were afforded the opportunity of sending their representatives to a Parliamentary body of the Government, the Second State Duma (from 1801 Georgia had been incorporated in the Russian Empire). And only in 1918 the first "Georgian National Parliament" was founded in independent Georgia. In 1921 the Parliament adopted the first Georgian Constitution. But, shortly after the adoption of the Constitution Georgia was occupied by the Communist troops of Russia. This was followed by a gap of 69 years in the Parliamentary Government in Georgian history. The first multiparty Elections in the Soviet Union were held in Georgia on 28 October 1990. The elected Supreme Council (the pseudo - Parliament in the former Soviet Union) proclaimed the independence of Georgia.

The bitter confrontation between the ruling and opposition parties led to an armed conflict which broke out in 1991. President Gamsakhurdia left the country, the Supreme Council ceased to function and power was taken over by the Military Council. In 1992 Eduard Shevardnadze assumed Chairmanship of the Military Council which was reconstituted into a State Council. The State Council restored Georgia's Constitution of 1921. The Council announced 4 August 1992 as the day of the Parliamentary Elections.

In 1995 the newly elected Parliament adopted a new Constitution. Today, Georgia is a Presidential country with a unicameral Parliament (150 MPs).

In the soviet past, the legislative branch of the government has been extremely weak in comparison to the executive branch and represented an institution that legitimized the decisions met by the ruling party. It has never been a place for political debate between different points of view; it was not considered as a

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<sup>106</sup> Source: the website of the Georgian Parliament, [www.parliament.ge](http://www.parliament.ge).



serious decision - making institution and was accordingly thought of by the citizens. Therefore, creating a system of checks and balances, clear separation of powers in the newly independent Georgian Republic has been the uppermost challenge. Only when the independence of the three branches of the government is achieved we can be able to talk about a high level of transparency and integrity of the separate State institutions. Since this process seems to take unexpected twists and turns in the young democracies of the former communist countries, we are still far away from what we want to achieve in terms of democratic governance. And, Georgia is surely not the only post - soviet country that considers creating responsive and transparent State institutions as an essential challenge for its State - building and national development.

In order to ensure transparency of the State institution, first of all you need a strong legislative basis, though this also can sometimes mean nothing as our recent past demonstrates. A set of strong monitoring and control mechanisms, existence of organizations that fulfill watchdog functions are necessary. The interest and readiness of the public, the citizens to get involved and take part in the decision - making, monitoring activities are also a must. And finally, a political will in the highest political circles is not of the least importance; otherwise, one can experience a situation when the public talks about apparent problems and the government play deaf.

In Georgia any talks about transparency of the State bodies, would have made your respondent smile a few years ago and only few optimists would agree that in a country where all forms of corruption had a long history, it would be possible to restore (or maybe create) trust and respect to the State institutions among the public. Corruption was a serious problem for all Georgian public institutions. Thanks to a lucky concourse of circumstances, the Georgian society managed a serious breakthrough from this gridlock<sup>107</sup>. More transparency leads to less corruption, more accountability. And as already mentioned, since the existence of all necessary legislation, often adopted thanks to a ongoing insistence of the western partners of the young democracies, is not a guarantee that people will really have and use the opportunity to access public information or exercise other rights defined in these documents, it is necessary to keep a watchful eye on the operation of the State institutions. Our study serves this purpose: by analyzing and matching the experience of several stakeholders with the legislative basis of transparency we tried to find those weak points in this process that can be further improved.

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<sup>107</sup> For more on this see: <http://www.u4.no/themes/uncac/report.cfm>.

## ***II. Legal and institutional framework for an open Parliament in Georgia***

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The freedom of Information and transparency of public institutions is guaranteed by the Constitution of Georgia, Article 24 namely says: “Everyone has the right to freely receive and impart information, to express and impart his/her opinion orally, in writing or by in any other means<sup>108</sup>.”

There is no separate document like the Freedom of Information Act in Georgia, which could State in more detail the rights of citizens on reception of information from State institutions. Instead, the Rules of Procedure of the Parliament in Georgia and the General Administrative Code of Georgia lay the principles for the Parliament and State Agencies accordingly, ensuring the transparency of these and describe in more detail the means by which citizens can exert their Constitutional right on access to public information.

### ***Legislation on Freedom of Information in the Parliament***

Chapter 3 of the Constitution - “The Parliament of Georgia”, defines the principles according to which the Parliament should fulfill its duties. This, first of all is the openness of the sittings: “Sittings of the Parliament shall be public. Under the decision of the majority of the members of the Parliament present, the Parliament shall be entitled to declare a sitting or a part thereof closed while discussing a particular issue” (Chapter Three, Article 60). Secondly, the Constitution says in the same article about the rules for voting and the necessity of publicity of the minutes of the Parliament: “Voting shall always be open or individual except for the cases defined in the Constitution or law. The minutes of the Parliament, except for secret matters, shall be published in the Official Gazette of the Parliament”.

### ***The Rules of Procedure of the Parliament of Georgia***

In more detail the principles for the functioning of the Parliament are described in the Rules of Procedure of the Parliament of Georgia (adopted February 17,

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<sup>108</sup> Important note: at the same time, Article 41 of the Constitution defines that “Every citizen of Georgia shall have the right to become acquainted, in accordance with a procedure prescribed by law, with the information about him/her stored in State institutions as well as official documents existing there unless they contain State, professional or commercial secret” and that “The information existing on official papers pertaining to individual's health, his/her finances or other private matters, shall not be accessible to anyone without the consent of the individual in question except in the cases determined by law, when it is necessary for ensuring the State security or public safety, for the protection of health, rights and freedoms of others”.

2004). The very first chapter (Article 1) of the document lists the main principles of the work of the Parliament. Transparency comes as one of the main principles among them:

- a) multiparty system;
- b) ensuring representative proportionality;
- c) discussing/resolving the issues freely and collectively;
- d) uncompromisingly following the Constitution of Georgia, the laws, the Rules of Procedure of Parliament and other normative acts and controlling their fulfillment;
- e) following the universal norms of international law and respecting them;
- f) transparency;
- g) community of interests of the State and the people.

Chapter XVIII, “the Conduct of the Plenary Sitting of Parliament” guarantees that public has complete and full coverage of the Sessions. Article 136 of the document defines: “Plenary sittings of the Parliament are open to the public unless specified as closed. The mass media representatives accredited according to the determined rule have a right to attend the public sitting. Public sitting is broadcasted live on TV and radio.”<sup>109</sup>

Further, the document defines the methods and ways that enable the openness of the Parliament and the ways of accessing the Parliament that are open to each citizen. For example, Chapter three defines in greater detail the exact location of the seats for the public in the Session Hall (Chapter three, Location of Parliament, the Sitting Hall and the Rites): “The middle of the upper balcony is reserved for representatives of Parliamentary Staff and citizens who wish to attend the session, adhering to the rules of Parliament. The right of the upper balcony is reserved for accredited representatives of the diplomatic corps and the left - for representatives of the mass media” (Article 5).

At the same time, Article 269 in Chapter XLVI - “Responsibility of Other Public Officials for the Violation of the Rules of Procedure” sets rules of conduct for the guests of the plenary sitting in order to ensure that the MPs won’t be disturbed by the visitors: “The guest of the plenary sitting of Parliament is obliged to observe order. S/he is prohibited to act in a way that prevents Parliament or an MP from carrying out State functions. During voting, the guest must abstain himself/herself from expressing his/her personal attitude towards the voting results. The Chairman of the Sitting has the right to ask a disruptive guest to leave the hall”.

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<sup>109</sup> Sittings are usually broadcasted on the “Second Channel” of the Georgian TV.

Article 6 is dedicated to the opportunities for students and the youth to visit the Parliament. “Youth and student representatives may be invited to the Parliament for educational purposes, such as to introduce them to the workings of Parliament and to teach them respect for the legislative process. It is permissible to hold their rewarding ceremony.

### *Conflict of interest and financial declarations of the MPs*

As public surveys usually demonstrate, the interest of the public for the financial conditions of the MPs is very high. The public belief that becoming a MP is a good way to make a fortune and that this is one of the main reasons why politicians fight for a seat in the Parliament is rather widespread and not completely wrong. As a result, the Rules of Procedure of the Parliament referred to this issue in distinct provisions: Part II on the Subjects of Parliament and their authorities, Chapter IV, Member of Parliament, Status of Member of Parliament, Article 12 states:

1. As provided in the Law of Georgia on “Conflict of Interests and Corruption in Civil Service”, an MP shall fill out the declaration on his/her property or/and financial conditions and submit it to the Information Bureau on Property and Financial Conditions of Public Officials.

2. The Committee on Procedural Issues and Rules periodically and in case of need analyses the information on the declaration on property or/and financial conditions of an MP submitted by the relevant bodies. If necessary, the Committee submits the issue for discussion at the plenary sitting of the Parliament”.

Another issue that is usually causing the curiosity of the public is the results of the voting. Article 142 of the Chapter XX, “Voting and Counting” stipulates: “The Chairman of the sitting presents the results of all votes to Parliament. The results are published in “Parlamentis Utskebani” (Parliament’s Newsletter) also, they are put on Parliament’s web page.

### *Transparency of the Committee Sitzings*

The sittings of the Committees are public and citizens interested in the issues to be discussed during the sitting can attend it, addressing the Parliament with a request in advance<sup>110</sup>: “Committee sitting is public. In special cases a committee holds a closed sitting. The decision on holding a closed sitting is

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<sup>110</sup> Though, the interest for attending of the general public for the Committee sittings is usually low.

made by the majority of votes of the acting members of committee. MPs, members of Government of Georgia and invited guests may attend the committee sitting with an advisory vote” (Chapter V, Committees of Parliament, Article 48).

In special cases the representatives of the public can receive the right to address the Committee’s members. For understandable reasons, this right is usually not granted to everyone who has the willingness to express his personal opinion. “The interested representatives of the public can be invited to attend the committee sitting. They can be given the floor by the decision of the Committee Chairman”.

An additional mechanism to ensure the transparency of the committees’ sittings is the access of the media to them with the right to disseminate the information from the sitting: “The accredited mass media representatives can be invited to attend the committee sitting. It is possible to allow TV or radio to report on the committee sitting and publish the information on the results of the sitting in the press” (Article 48).

Chapter XXII, “Consideration of a Bill (Draft Law)”<sup>111</sup> in the Committee provides the framework for the transparency of the agenda of the sitting and the draft law to be discussed:

“The committee’s members are informed about the date of the committee sitting at least two days before the sitting. The draft law to be discussed at the committee sitting is disseminated among the committee members within the same term. The information about the committee sitting and its agenda is put on the Parliament’s web page at least two days before the sitting” (Article 153).

### *Temporary Investigative Commissions*

Temporary investigative Commissions usually attract a wide attention of the society. Created on behalf of especially acute political issues, they serve as a good indicator of the openness and fairness of the legislative control on the government. Chapter four of the Rules of Procedure of the Parliament of Georgia defines the rules of the functioning of these (almost the same as for ordinary commissions). Article 65 reads:

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<sup>111</sup> The same chapter once again states that the sitting “may be broadcasted on TV and radio and the information on the results of the sitting may be put on Parliament’s web page”.

“The members of the Temporary Investigative Commission are informed in advance about the date and the agenda of the commission sitting. This information is put on Parliament’s web page. The information on the sitting of the commission may be published in the press”.

The sittings are open to the public and the media, unless the members of the Commission decide otherwise: “Other MPs and invited persons may attend the public sitting of the temporary investigative commission with an advisory vote”.

By the suggestion of its member, the temporary investigative commission can make a decision on holding a closed sitting (Article 65).

Furthermore, the *conclusion* of the Investigative Commission has to be discussed in the presence of the media: “Temporary Investigative Commission discusses the conclusion on the issue under consideration publicly, with obligatory TV and radio broadcast, except those issues from the conclusion, publicity of which is limited by the legislation” (Article 67).

#### *The civic participation in the law making process: Legislative Initiatives*

The civic participation in the law making process is guaranteed by Article 67 of the Constitution: “The President of Georgia only in the exclusive cases, the Government, a member of the Parliament, a Parliamentary Faction, a Parliamentary Committee, the higher representative bodies of the Autonomous Republic of Abkhazia, the Autonomous Republic of Ajara, not less than 30,000 electors shall have the right to legislative initiative”.

And in Article 145: “As provided by Article 67 of the Constitution of Georgia, following subjects have a right to launch a legislative initiative: the President of Georgia - in exceptional cases, Government of Georgia, a Member of Parliament, a committee, a faction, the supreme representative bodies of the Autonomous Republics of Abkhazia and Adjara, at least 30,000 voters”.

#### *Drafting a Bill and Submitting it to Parliament*

These issues are discussed in the Rules of Procedure of the Parliament of Georgia in Chapter XXVI, “Exercising the Legislative Initiatives by the Voters”.

An initiative group of citizens should consist of five persons. This groups appeals to the Bureau of the Parliament with a written statement about the registration of the initiative group. Draft law and the following data of the initiative group shall be added to the statement: name, surname, date of birth, the personal Number of ID, address and telephone number. This data are

transferred from the Bureau of Parliament to the Committee of the Procedural Issues and Rules within two days.

The Committee on Procedural Issues and Rules, within five days after receiving data from the Bureau of the Parliament, gives registration form to the initiative group or a motivated refusal, if it finds that there is any kind of violation.

The Initiative group has the right to request back the statement before the registration form is provided. After the initiative group receives the registration form, they can start gathering signatures of supporters of the draft law. This should be conducted strictly according to the rules prescribed in this document:

Paragraph 6 of the Article 176<sup>4</sup> reads: "Each page given by the Committee on Procedural Issues and Rules is signed by no more than 50 voters. The person responsible for the correctness of the signatures includes the following data: name, surname, date of birth, personal number of ID, address and date of signature, which is approved by a voter with a signature. Each page is verified by the member of the initiative group, who is responsible for the righteousness of the signature and also is responsible for falsification. His signature is verified by the Notary Bureau or by the self-government or/and government organizations". 45 days after taking the registration, filled forms must be submitted to the Bureau of the Parliament and the Bureau transfers these forms within 2 days to the Committee on Procedural Issues and Rules.

The Committee on Procedural Issues and Rules according to the selection principle checks the validity of the signatures within 2 weeks and transfers the results to the upcoming Bureau of the Parliament for discussion. The Bureau refuses to give a floor for the discussion of the draft law after the Committee on Procedural Issues and Rules gives a negative resolution if the validity of signatures are under doubt and therefore, the number of signatures is less than 30,000. Accordingly, the draft law will be denied.

"All signatures are nullified if:

- a) not signed on the appropriate paper, which is not in accordance to the rules mentioned in the paragraph 6 of this article
- b) do not contain the data mentioned in paragraph 6
- c) are conducted by falsification by an inappropriate person, which can be certified by a voter".

In case of a refusal, the initiative group is eligible to appeal to the first instance Court within 5 days.

In case that positive resolution of the Committee on Procedural Issues and Rules on the signatures together with the draft law, all these are transferred to the Bureau of the Parliament. One of the members of initiative group is the reporter on the draft law and the co-reporter is the representative of leading committee. The reporter of the draft law cannot be a member of the Parliament or of the Government or the representative of President and Government.

The draft law is discussed according to procedure defined by the Rules of Procedures.

Article 165 of Chapter XXIII on “Consideration and Adoption of a Bill (Draft Law)” at the Plenary Sitting of Parliament says: “The protocol and the shorthand of the sitting are drawn up at the consideration of a draft law at the plenary sitting of Parliament. The protocol of the plenary sitting of Parliament, except the confidential issues, can be published in “Parlamentis Utskebani” (Parliament’s Newsletter) and put on Parliament’s web page.

#### *The Full or Partial Revision of the Constitution of Georgia*

Moreover, a revision of the Constitution is also possible in the case of a request from the according number of citizens. Though, necessary procedure and the number of necessary subscriptions for this case are more complicated to be fulfilled. Article 102 of Chapter Eight (Revision of the Constitution) of the Constitution says:

“The following shall be entitled to submit a draft law on general or partial revision of the Constitution:

- a. the President;
- b. more than half of the total number of the members of the Parliament;
- c. not less than 200,000 electors.

A draft law on the revision of the Constitution shall be submitted to the Parliament, which shall promulgate the form for the public discussion. The Parliament shall begin the discussion of the draft law after a month from its promulgation”.

The same right of the public is stated in the Rules of Procedures of the Parliament. Article 172 in Chapter XXI (Part VI) “Law - making process” states: “The President of Georgia, the majority of all the MPs, at least 200,000 voters have a right to submit to Parliament a draft law on the full or partial revision of the Constitution of Georgia approved with the appropriate signature (signatures)”.



It's worth mentioning that the procedure for submitting a draft law on the revision of the Constitution is described in detail. This is on one hand understandable since it deals with an issue that must be dealt with great thoroughness; on the other hand it leaves the reader wishing that the document deals with an equal detail other procedures.

Further procedures are described as follows (Article 175):

1. The citizens of Georgia with a right to vote create an initiative group consisting of no less than *10 members*, in order to execute their right to submit a draft law on the full or partial revision of the Constitution of Georgia.
2. An initiative group submits a request of registration to the Bureau of Parliament. The request shall include a draft law on the full or partial revision of the Constitution of Georgia and the following data on the members of the initiative group: name, last name, address, and contact phone number. Within 3 days the Bureau passes this information to the Committee on Procedural Issues and Rules.
3. Within 7 days of the reception of the registration request, the Committee on Procedural Issues and Rules provides the initiative group with a registration certificate or a well reasoned refusal on registration. The violation of the requirements set forth in paragraphs 1 and 2 of this article serve as the bases for the refusal on registration.
4. In case of receiving a refusal on registration, the initiative group has a right to address Parliament, which discusses the request in the nearest week of the plenary sittings and makes a final decision.
5. The initiative group can withdraw its request of registration before the reception of the registration certificate.
6. From the day of receiving the certificate of registration, the initiative group is authorized to start collecting the signatures of the supporters of the draft law on the full or partial revision of the Constitution.

Further the document describes how many signatures should contain each sheet of paper (50 signatures), which information should it contain about the voter besides his full name (number of IDs, address and date of signature). Signatures shall be certified at the Notary Bureau or local self - government or government body and that the person responsible for collecting the signatures confirms each of these sheets by signing them.

Within 4 months after receiving the registration certificate, the initiative group hands over the sheets with signatures to the Bureau of Parliament, which passes them to the Committee on Procedural Issues and Rules within 3 days.

Within one month of the reception of the sheets, the Committee on Procedural Issues and Rules examines the validity of the signatures and reports the results to the Bureau of the Parliament. If the violation of the requirements of these Rules of Procedure is established, the Bureau refuses the initiative group to present the draft law on the full or partial revision of the Constitution for Parliamentary consideration.

Here has to be mentioned, that the verification of the signatures, for example performed before the elections for the registration of the parties, always serves for bitter political debates. It is never possible to find out if the signatures are really checked, and while the government sometimes claims that part of the signatures is forged, the opposition parties usually assure that the government uses this argument as a political mechanism to fight its opponents.

The responsibility for any forgery of the signatures bears the person who collected them and “If after the verification, the number of signatures is less than 200,000, the execution of a right to present a draft law on the full or partial revision of the Constitution by citizens’ initiative is considered rejected”. Since we deal here with a big number of signatures there always is the danger that this technical issue can become a reason for a rejection if the Government isn’t supporting it.

In case, when the presentation of the draft law on the full or partial revision of the Constitution is rejected, the initiative group has a right to address the Supreme Court of Georgia within 5 days. While in case of a positive conclusion of the Committee on Procedural Issues and Rules on the validity of the voters’ signatures, the draft law on the full or partial revision of the Constitution and the signatures of the voters are submitted to the Bureau of the Parliament. The Bureau then presents these materials to the Parliament in the nearest week of the plenary sittings.

“Parliament accepts the conclusion of the Committee on Procedural Issues and Rules on the validity of the signatures as a notification and within 15 days publishes the draft law on the full or partial revision of the Constitution in “Sakartvelos Sakanonmdeblo Matsne” (Georgian Legislative Newsletter) for general public discussion”.

### *The website of the Parliament*<sup>112</sup>

Since the website of the Parliament is mentioned on several occasions in the Rules of Procedures of the Parliament of Georgia as one of the main sources of acquiring information about the Parliament, it's worth mentioning, in a few sentences, how the website really looks like. After a long and diligent observation of the website, it can be said that the Georgian Parliament has a website that widely answers the demand that can exist in the society on the information from the Parliament. The website presents not only information and contact details of the MPs, a very wide legislative basis and a list of interesting links, but what is without any doubt more important, gives valuable information on the results of the votes, agenda of the plenary sessions, brief reports on the Committee Sitzings etc. This information is regularly updated. The website also presents the possibility to subscribe to the Parliamentary newsletter which regularly provides information about the news from the Parliament. The Parliament issues a daily newsletter, a weekly newsletter, a Parliamentary newspaper and a Georgian Legislative Newsletter. Basically it can be said that any citizen that uses internet can access the information from the Parliament on the website.

The main information load on the website is in Georgian language and the English translation is available only with regards to the most important issues, which is probably understandable because the translation of the amount of the information regularly loaded on the website affords a very high human resource investment. A drawback of the website probably is that not all information easy to find, for example the results of the votes, can be accessed via the newsletter of the Parliament: this shouldn't be very convenient for ordinary users.

On the whole, if we compare the Parliament's website with the websites of the Georgian Ministries and of other State institutions, which usually have websites with sections constantly being "under construction", it can be stated that the Georgian Parliament gives an excellent example of transparency of information by the means of internet communication.

### *Other important documents ensuring transparency of the State institutions*

Several laws that included mechanisms ensuring the transparency of the Parliament were abolished in the past few years since they were included into the Rules of Procedures of the Parliament (for example, the Law on the temporary Commission, the Law on the Temporary Investigative Commission,

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<sup>112</sup> [www.parliament.ge](http://www.parliament.ge)

the Law on the Parliamentary Committees, were all abolished in November 2005).

*a) Law on the Status of the Members of Parliament*

Chapter two of this Law obliges every MP to annually make public his/her financial and income declaration. It should contain complete information about the annual income of the MP and his family members. The content of the declaration can become subject for discussion in the Parliament. The declaration becomes public one month after it is turned in by the MP. The decision about the annihilation or further preservation of the declarations is met by the Parliament five years after the expiration of the term of the current Parliament (Articles 9 and 10).

In Chapter three, among others, it is clearly stated that it is the obligation of the MP “to meet citizens, react on their complaints and requests” (Article 16).

Chapter five “the communication of the MPs with the electorate describes the obligations of all State institutions to assist the MPs in their effort to defend the rights of the citizens (provide him/her with transportation, office space or other necessary stuff) and that the expenses will be covered by the State budget.

*b) General Administrative Code*

In Georgia the Law on Freedom of Information was adopted as Chapter 3 of the General Administrative Code of Georgia in June 1999 (amended in 2001)<sup>113</sup>.

This documents mainly described obligations of the public agencies concerning freedom of information. It also defines the obligation of each public agency to present in December an annual report to the Parliament about the number of citizens' appeals to the agency and decisions made on them, number of violation of the public servants of this code and penalties on them etc. Therefore, according to the Code, the Parliament itself carries an important role as a controlling institution of the principles of Freedom of Information by the public institutions.

It sets a general presumption that information kept, received or held by a public agency should be open<sup>114</sup>. All public information should be entered into a public

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<sup>113</sup> The Code doesn't in general define the rules of procedure of the Parliament but chapter THREE (“Freedom of Information”) is an exception (Article 3). Therefore additional standards for transparency of the Parliament are set in the General Administrative Code (Chapter three).

<sup>114</sup> In general the freedom of information legislation in Georgia sets the following standards: Public information is open, unless otherwise prescribed by the law; Any interested person may receive information immediately, or in exceptional cases envisaged by law, within no more than 10 days if responding to a request for public

register in two days. The law gives anyone the right to submit a written request for public information regardless the form that information takes and without having to State the reasons for the request. The agency must respond immediately and can only delay if the information is in another location, is of a significant volume or is at another agency. Fees can only be applied for copying costs. The law also sets rules on the access and use of personal information<sup>115</sup>.

*c) Law on State Secrets*

The Law on State Secrets (adopted in 1996) is considered as one of the impediments for freedom of information in Georgia<sup>116</sup>. It sets rules on the classification of information where "disclosure or loss of which may inflict harm on the sovereignty, Constitutional framework or political and economic interests of Georgia". There are three categories with fixed terms for the length of classification "Of Extraordinary Importance"- 20 years, Top Secret - 10 years and Secret - 5 years. The State Inspection for Protection of State Secrets oversees the protection of secrets and can order declassification. A 1997 decree sets the procedures on classification. Information shall be declassified no later than at the end of the fixed term (unless it is extended by the President) or when it is no longer necessary to be classified.

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information requires: (a) the acquisition of information from its subdivision that operates in another area, or from another public agency, or processing of such information, (b) the acquisition and processing of separate and large documents that are not interrelated, or The General Administrative Code of Georgia, article 2, paragraph 1,(l) (c) consultation with its subdivision that operates in another area, or with another public agency. An interested person requesting public information does not have to specify the reason for requesting the information concerned; Sessions conducted by corporate public agencies must be transparent, unless otherwise prescribed by law; Everyone shall have access to information concerning the environment, hazards to health and life, fundamental principles and the objectives of a public agency, etc.

<sup>115</sup> All official documents - e.g. charts, models, plans, diagrams, photographs, electronic information, and video and audio records - that is, information held by a public agency or received, processed, created, or sent by a public agency or a public servant in connection with official activities, are public.

<sup>116</sup> For more on this check the website of Georgian Young Lawyers Association that is actively engaged in a campaign for ensuring Freedom of Information in Georgia : [www.gyla.ge](http://www.gyla.ge).

### ***III. Relevant stakeholders' assessment on the transparency of the Georgian Parliament***

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Before discussing the results of the survey conducted in Georgia two important issues have to be mentioned. First, one should take into consideration that Parliamentary elections in Georgia were held in the beginning of 2008 and therefore, the answers of the stakeholders reflect their experience of communication with the previous Parliament and unfortunately, don't necessarily reflect the current situation. Mentioning this is very important since the current Parliament becomes an object of criticism more and more often.

Second, one shouldn't forget that data for the research within this project was collected in a very dramatic period, namely August - September 2008, when Georgia was engaged in a full scale war with Russia. This, on the one hand affected the responsiveness of our potential respondents and on the other hand, the August events made it rather difficult to approach the Parliament with any issues but the armed conflict with Russia<sup>117</sup>. For this reasons, we are especially thankful to the organizations that took their time to fill in the questionnaires sent by us or agreed on interviews.

We sent questionnaires to 30 NGOs, receiving 15 answers, half of which were from regional NGOs; 6 trade unions, eventually managing to get in touch only with the Georgian Trade Unions Confederation; 5 business associations, receiving only one answer; 10 mass media representatives, half of which were regional media organizations, receiving 3 answers.

The NGOs and other stakeholders that expressed their readiness to fill in the questionnaires, mention several important factors regarding the openness of the Georgian Parliament. The question about the experience of the stakeholders with the Parliament didn't receive an enthusiastic response: very few of them gave more than two examples. Most frequently was mentioned the cooperation with a parliamentary committee on legislation or certain policy program. Several influential organizations (such as big NGOs) have collected rather impressing experience in this regard and evaluated their cooperation with the Committees as successful; while weaker organizations looked back to

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<sup>117</sup> Though, the war provided us with a good opportunity to check how the legal provisions of the transparency of the Parliament actually work: the sessions of the ad hoc Commission on Investigation of the Military Aggression and other Acts conducted by the Russian Federation were aired live on TV (the most crucial hearings on several TV Channels simultaneously). The political credibility of the Commission's work was doubted and called "a political show" by the opposition parties and some independent experts, but if we take just a procedural approach to the Commissions work, it was an exceptional experience to see live on TV high rank political figures being summoned and questioned by a Parliamentary Commission.

an experience where they were recipients (of information or political support) rather than contributors to the legislative process.

All of the stakeholders had to deal with different committees of the Parliament, depending on the profile of their activities. Thus, the experience they have is quite different: ranging from disappointing to satisfactory or good, depending on the Committee, Head of the Committee and the Members.

The main interest of the stakeholders as regards the Parliament's activities is primarily connected with the desire or necessity to be informed about the legislative decisions in the fields that the stakeholder operates in. The willingness to exert some kind of influence on this legislative decision making process was also mentioned as an interest but only by the most influential and experienced stakeholders, such as big NGOs. Regional stakeholders as well as the media define their interest more as "getting informed in time about decisions/laws adopted". The average score for the interest of stakeholders in parliamentary activity was 4 (on a scale ranging from 1 - *no interest* to 5 - *greatest interest*).

The absolute majority (95%) expressed their interest in the steering committees' debates and the acts and the documents of the Parliament. Surprisingly, the interest in the MP's votes was low (only half of the respondents). Other interest according to one of the respondents is the publications of the Parliament.

The main possibilities of achieving public information from the Parliament were mentioned as follows (in order of number of being mentioned):

1. A request for information in written form (addressed to the Head of Parliament, Head of Committee, Head of the Apparatus).
2. The Internet: while most of respondents named here "the website", some of them were more specific and wrote "the electronic newsletter of the Parliament".
3. Personal contact with the MPs, were mentioned as another possibility, especially by the media and some of the NGOs.

Typical and most common impediments here that the stakeholders have experienced, were (listed in order of times they were mentioned):

1. Frequent visits of the MPs abroad and therefore their frequent absence. It is absolutely impossible to reach some of the MPs ever.

2. Very late responses in violation of all according instructions.
3. Regional NGOs mentioned the territorial farness from the Capital as an impediment.

Worth mentioning here is that the majority of the respondents preferred to ignore this question or just commented that they can't remember any serious impediments.

95% of the respondents have formulated a request to the Parliament and have received an answer. Only 1 % described it as "satisfactory", while others prefer rather a formulation of "incomplete". Though it is rather difficult to draw far going conclusions from this data, since the absolute majority of the stakeholders that received incomplete information didn't answer the next question in the questionnaire, namely asking to give examples of such requests (there was only one case when the stakeholder gave an example of such). Those stakeholders that were satisfied by the answers from the Parliament described that nature of this successful communication with the Parliament. Accordingly the results of the question if they had been at law with the Parliament on the transparency issues were answered negatively.

So, if we try to sum up the questions about responsiveness of the Parliament to written requests, one can say that the answers on the requests usually *do arrive*, and it would be unfair to talk about low responsiveness of the Parliament, but it can rarely be described as complete. Few stakeholders have experience addressing the Court with a law suit: those who did, had received Court decision compelling the Parliament to issue complete responses to the respective requests.

The absolute majority of the stakeholders expressed their interest in further advocacy campaign, mostly targeting as main issues here the acts and documents of the Parliament and the Committee debates. This polite readiness of all the stakeholders to get engaged in the advocacy campaign, can probably be linked to the fact that it would just be a bad tone to answer negatively a question that was demanding for someone's readiness to engage in the struggle for more transparency. Admittedly, we doubt a possible active engagement of all stakeholders in this.

The main interest of the NGOs, as well as of other stakeholders, mainly lies with the process of debates around the draft laws and the transparency of this process. It is not uprising, because the participation of the relevant stakeholders in the law making process completely depends on the fairness of the law making process. A close cooperation with the civil society during the



decision making process is a must that ensures fairness of the process. Unfortunately, as stakeholders stated, the decision making process often develops in such a speed and decisions are made in such short time, that it leaves the relevant stakeholders no chance to get information on time, react on that and engage in the process. Almost everyone expressed interest that the committees' debates become more participatory.

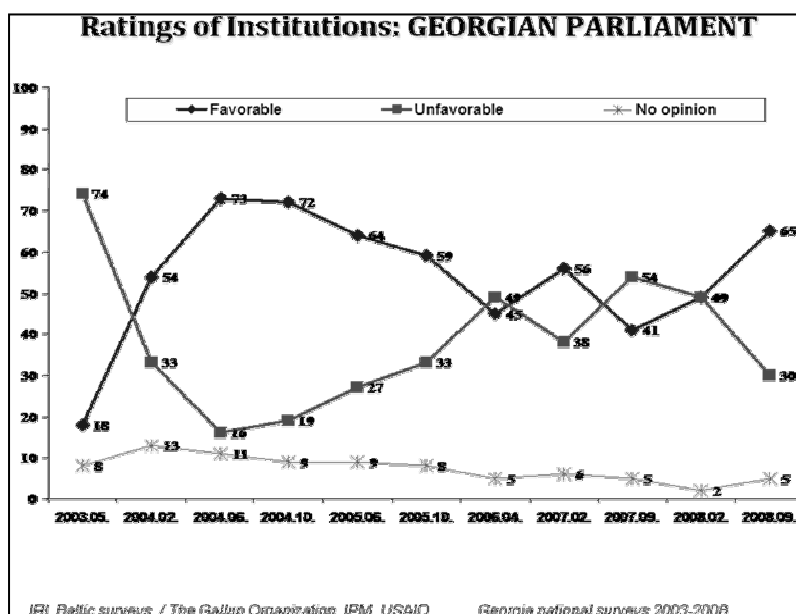
Talking about the success stories of some civil society organizations in monitoring the Parliament's activities, we would like to mention the following: An exceptional performance and a very rich experience in monitoring the transparency of the Parliament's activities is demonstrated by Transparency International Georgia. The Parliamentary Program of this organization lasted for several years and the results were rather impressive. Apart from the public opinion on the Parliament survey which is partially presented in the next part of this report, the organization published in 2008 following data about the Georgian MPs: 1) financial declarations of the MPs (his/her salary, salaries of their family members, ownership of cars, real estate, bank credits taken, gifts received, shares in businesses, bank accounts), 2) activities of each MP in the period of 2004 - 2008 (number of request received, questions, issues raised by the MP, performance of his/her bureau - days per week, working hours, list of activities in his/her region), 3) voting results on major laws over the four years (Tax Code of Georgia, Organic Law on Local Self-government), 4) list and number of cases when the majoritarian MP didn't attend the Plenary Sessions, number of cases when majoritarian MPs handed their electronic ID cards to colleagues (unfortunately widespread in the Georgian Parliament) and fees imposed on MP for (sums withheld from their salaries) for these latter violations. No doubt, this kind of information serves as an excellent indicator for the electorate to find out what their MP is doing in the Parliament: is he/she actively engaged in the lawmaking process or is he/she using the mandate for personal enrichment?

### *Public opinion about the Georgian Parliament*

There are two sources that can provide information about the public opinion concerning the Georgian Parliament. First, this is the survey conducted by the International Republican Institute (results disseminated in October 2008; survey conducted International Republican Institute, together with Baltic Surveys Ltd./The Gallup Organization, The Institute of Polling and Marketing). Presented here are the results of the public trust within these institutions in Georgia from 2003 until 2008. According to the survey, institutions that enjoy a very favorable attitude of the public are the church and the media. The Georgia army and the police made an impressing leap over these five years and scored very high. The President's office as well as the government, enjoyed high

ratings in 2004, after the Rose Revolution, gradually losing scores over the next year, reaching the worst score in autumn 2007 (period of massive demonstrations in Georgia). Though according to the survey, the ratings seem to go up again in the last year. Almost the same can be said about the ratings of the Georgian Parliament: the Parliament enjoyed most popularity and trust in the period of the Rose Revolution and suffered the most mistrust in autumn 2007.

Another source for public attitudes about the Parliament was the Public Opinion Survey implemented by the Transparency International Georgia Office. In 2008, Transparency International Georgia published the results of the public opinion survey which covered public opinions about the State institutions, their performance and the attitudes of the Georgian society towards them<sup>118</sup>.

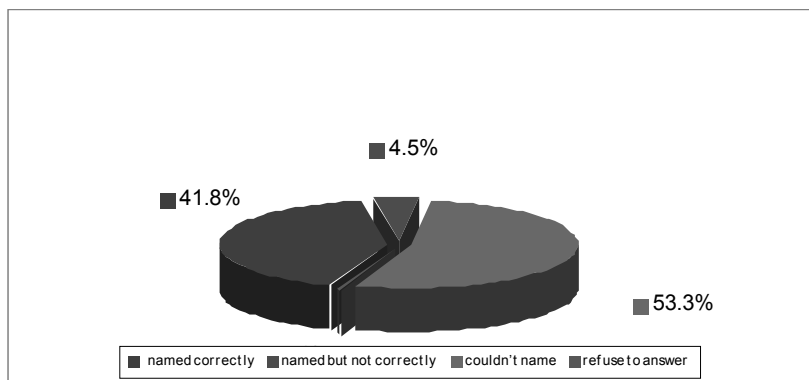


The survey showed that, despite the fact that the level of trust in the Georgian Parliament has risen since October 2007, it still remains low: only 9.4 percent of the respondents have *full trust* in the Parliament.

<sup>118</sup> For more information please see [www.transparency.ge](http://www.transparency.ge)

The survey demonstrated that respondents are dissatisfied with the activities of the majoritarian MPs. The fact that most of them don't even know who their majoritarian MP is, or don't expect him/her to help citizens to resolve their problems (27.2 percent of the respondents, don't expect a majoritarian MP to reply to their question) or, which is probably more striking, the fact that 93.7 percent had never met an MP, is a clear sign that MPs are not actively enough in looking for ways to communicate with the citizens and while elected, they don't bother with too much public work (according to the same survey approximately two thirds of the respondents believe that MPs are active before elections, while only 6.8 percent shared the view that MPs are active throughout their term of office).

*Q: Do you know who the Majoritarian deputy of your electoral district is?*

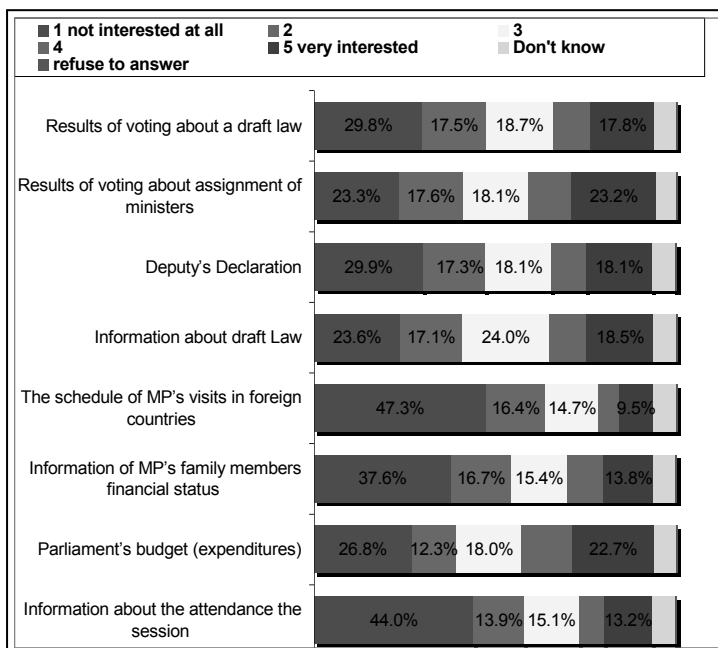


Source: TI Georgia Public Opinion Survey, 2008.

88.9 percent of the respondents answered that they don't know anyone who visited the building of the Georgian Parliament over the last 4 years. Only 7.7 percent gave a positive answer, 0.6 percent refusing to answer and the rest answered - don't know.

Regarding these attitudes, it is probably not surprising that citizens don't show high interest in information from the Parliament and are more interested in how often MPs travel abroad or if they regularly attend the sessions, rather than in the results of their work.

### *Interest for information from/about the Parliament*



Source: TI Georgia Public Opinion Survey, 2008

Another problem regarding the low level of trust and communication between the citizens and the members of the Parliament is without doubt, that citizens are not well informed about the possibilities and ways to approach the Parliament. Despite the efforts of various NGOs in the country to provide citizens with according information about their rights, it seems to be a matter of time before the majority of the Georgian society starts to actively implement their rights in this regard. Since some basic rights concerning the freedom of information are provided in the Constitution, it can be surely stated that such gaps in public awareness is a serious problem and a drawback of the primary education system, which does not provide young people with enough information on such rights.

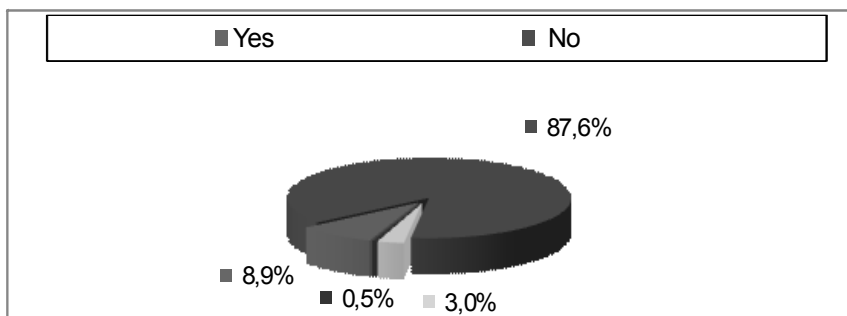
Interesting results are demonstrated by answers to the question about which of the categories of are of public interest. As the following percentages show, in most cases only half of the respondents know which information is public:

voting results on draft laws - 55.8%, voting results on appointments of ministers - 57%, annual financial declaration (declaration on annual income) - 41.3%,

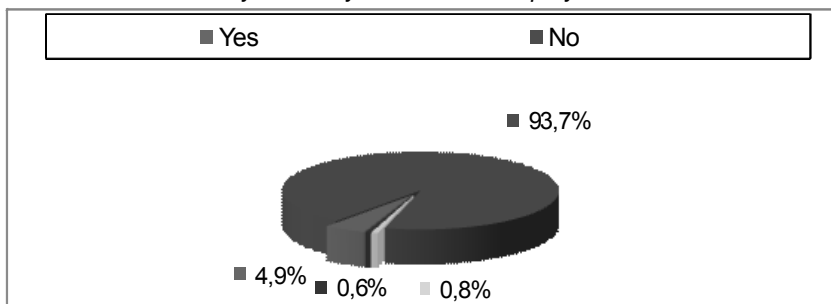
draft laws to be discussed in the Parliament - 50.9%, schedules of international travel of the MPs - 24.3%, financial declarations of the family members of the MPs - 37.1%, budget of the Parliament - 46.8%, information on the attendance on the plenary sessions - 36.9%. The rest thinks this information is not public or didn't know at all.

Another question asked was if each citizen of Georgia has the right on following (positive answers): attend any plenary session - 17.8% (66.5% think they don't have the right to do so!), address the Parliament with a request - 66.6%, personally meet any MP - 67.0%, impeach the Deputy from his district - 25.0%, demand creation of a parliamentary commission - 18.4%, initiate and present a draft law - 21.3%, ask for and receive notes of a plenary session - 21.9%, address (make a speech) on a plenary session - 13.7%.

*Q: Did you approach the Parliament officially (in a written form) and know someone who has done so?*



*Q: Has the member of your family ever met the deputy?*



Source: TI Georgia Public Opinion Survey, 2008

Interestingly, respondents don't blame MPs solely for these problems in communication: while most of them stated that the MPs are not active enough,

they also mentioned citizens should become more active and more informed about their rights. But of course the majority of the respondents see as one of the best solutions that the MPs do more to approach the electorate and organize public meetings more often<sup>119</sup>. Most of respondents show rather low interest in attending public meetings and a great majority (more than 70 %) see the media (mostly the TV) as the most acceptable and reliable source of information about the Parliament.

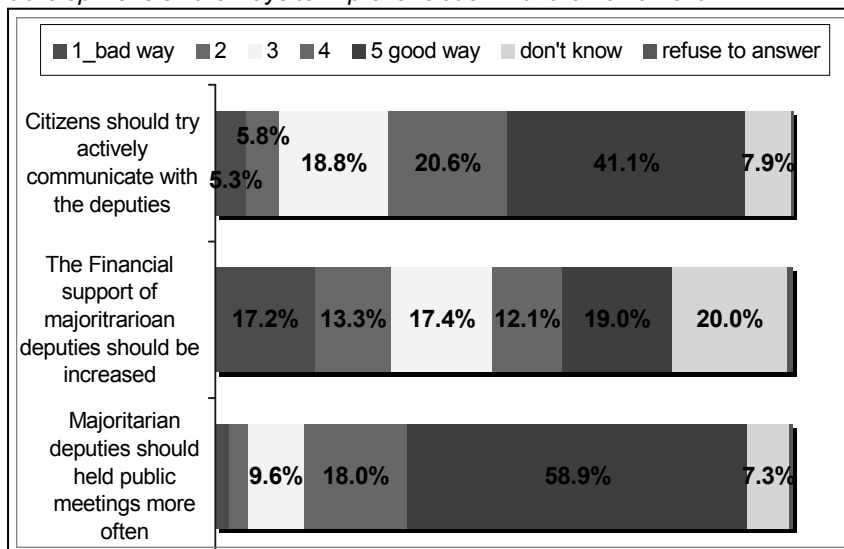
Finally, the question of the public trust in the Parliament has, in the Georgian context, an additional meaning: during the serious political crisis in the 2007, when the rivalry between the opposition parties and the ruling party reached the pinnacle and turned into massive demonstrations<sup>120</sup>, the question of turning Georgia into parliamentary democracy was raised by some political opponents of the regime. This idea didn't find wide support in the society or among experts at that time, but still remains an attractive possibility in some political circles. The Parliament, with its low public *full trust* results, still did better in the TI Survey than most of State institutions outscoring them by "average trust" (the judiciary or the Central Electoral Commission are unfortunately the least trusted). Thus it can't be said that since more people get dissatisfied by the President (and many observers expected that the events of the August could trigger this) and State institutions, the chance can grow that citizens will see a possible solution in strengthening of the legislative branch, thus giving a new life to the discussion about parliamentary democracy.

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<sup>119</sup> Worth mentioning is that after this survey parliamentary elections were held in Georgia. Refusal of the opposition parties to take seats in the new Parliament (winning 30 seats from 150) left the Presidents Party, the National Movement in the absolute majority in the new Georgian Parliament almost completely depriving it the function of *political debate*. This serious drawback in the recent political development in the Georgian history hasn't remained unnoticed by citizens and the trust and the reputation of the newly elected Parliament has seriously sunk. Due to the dramatic developments in August, this hasn't found a serious public outcry yet, but will definitely become an issue as soon as the external factor as the Russian military Aggression in August diminishes and the political life in the country returns to the normal pace. Opposition leaders already talk about necessary preliminary parliamentary elections in the next six months.

<sup>120</sup> This political crisis found its culmination on 7 November when the government applied force against peaceful demonstrators and the president was forced to call for preliminary presidential elections.

*Public opinions on the ways to improve relation with the Parliament*



Source: TI Georgia Public Opinion Survey, 2008

#### ***IV. Conclusions and recommendations for a more open Georgian Parliament***

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The main findings of the research in Georgia can be put together as follows:

- The right to freely access information on the parliamentary activity is stated in the fundamental law which stipulates the publicity of parliamentary sittings, as well as the openness/publicity of MPs' votes;
- There still are some legislative gaps that present serious impediments for the FOIA: Law on State Secrets; there are no regulations on penalties in cases when the request for information gets late or incomplete response;
- Lack of a civic pressure on making the activity of the Parliament and other public institutions more transparent and accountable due to a limited knowledge of the rights and of the existing opportunities in that respect;
- The Georgian Parliament effectively uses electronic means in keeping citizens informed about its activities: the website significantly answers the demand of information that an interested stakeholder may look for (information on individual MPs, legislative databases, results of votes, reports of the standing committees' sittings). It also offers the possibility of subscribing to newsletters/newspapers issued by the Parliament

A final note which is important for understanding the challenge of a young democracy in problems as discussed in this research, is following: the achievement of a higher level of transparency of the Parliament and other State institutions is of course directly connected with the problem of political environment in the country. Therefore, it is extremely difficult to formulate recommendations in an environment where the political developments rather often take unexpected twists and turns as it is in Georgia. In the Georgian case, it is, for example, the threat of foreign aggressive intervention in the inner political developments that often plays a role and serves as a justification for weak and unfeasible democratization efforts of the Government. For example, over the last years, the legislative branch of the Government in Georgia has suffered very serious decline in its influence and power.

And still we think that our research revealed some fields where there is enough space for action that can improve the level of openness of the Georgian Parliament:



- Both, the Parliament as well as the civil society should invest more time and effort in informing citizens more about their rights regarding free access to information.
- Strict control over the fulfillment of the MP's obligation to meet regularly with citizens and public representatives is necessary.
- The legislative process has to become more participatory: almost all stakeholders report that the process is often too rapidly unfolded for interested parties to be involved with relevant input.

## **What can we do further for “opening” our Parliaments?**

### **General conclusions and common strategy on advocating for more transparent Parliaments across the Black Sea countries**

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Comparative approach of the four countries comprised in the present study has brought significant information on how transparency of the parliamentary activity is reflected in legislation and in institutional practices in the countries involved. Relevant information concerned how national legislatures were perceived by local civil society actors and what further steps are needed for these key institutions more “open” and keen to provide a participatory lawmaking process. As stated from the very beginning, the original premise of the research was that it is time to bring a new dimension to the regional dialogue on good governance and, although not following a “teacher - student” path, national partners may share experiences and learn from counterparts about what could be further done for reaching the above stated objectives.

Based on this approach - and having as starting point the primary results of each national research - partner NGOs in the project have agreed during the regional conference held in Bucharest on October 9 - 11, 2008, that several aspects concerning the actual State of “openness” of national parliaments are worth to be taken into consideration with the explicit purpose of shaping effective advocacy strategies for further improving the situation in each of the four countries. Amongst the most prominent aspects defining each country’s specific treats of parliamentary transparency that were raised by the partners were:

For the case of *Romania*:

- Solid legislative and institutional framework regulating the obligation to provide all information on parliamentary works, including individual records of each MP’s activity (roll-call);
- Improper simultaneous interpretation of the laws regulating free access to public information and the protection of personal data, which makes sometime difficult to obtain certain information (e.g. MPs presence sheets, as they include signatures which are considered as personal data);
- Insufficient managerial skills for handling information related to MPs’ activity at the level of the two specialized departments - Public Information and Civil Society Relations’ Department in the Chamber of Deputies and Public Information Office of the Senate;
- Lack of regulation on categories of MPs’ constituency related activities - generating lack of information for interested

stakeholders; furthermore, the legal (inexistent) statute of the constituency office is the most important obstacle in accessing information, as the law is not *stricto sensu* applicable to them;

- Lack of enough transparency of steering committees' works - except from 3 committees in the Deputies' Chamber that have introduced live broadcasts of meetings, the rest do not use such instant transparency mechanisms. Moreover, minutes of steering committees' meetings are rather published on the website with considerable delay (the rule sets 10 days for that procedure, but usually it takes longer). In a similar manner, the agenda of steering committees' meetings is inconsistent, as its content is constantly changing, due to either political reasons or to inefficient time management during debates.

For the case of the *Republic of Moldova*:

- The Moldovan Parliament does not use an electronic voting system, which makes it practically impossible for any interested stakeholder to monitor the individual mandate performance of MPs. The main argument for not using such system is the lack of financial resources for purchasing it;
- The website of the Parliament hasn't been improved since 1998; almost no electronic document regarding parliamentary activity is published on the website; law initiatives coming from the Government may be consulted, yet there is no easy access to the final approved documents;
- MPs are not "available" to citizens (not even their photos are posted on the web);
- Although the Internal Standing Orders of the Parliament State that plenary sittings are public, there is no practice in citizens'/organizations' participating to these sittings, moreover because the security staff evokes the lack of space for public in the meeting hall;
- On the other hand, no coherent civic initiative has been ever undertaken by an NGO/a coalition of NGOs in Moldova for putting a civic pressure onto the institution and for calling for a more transparent and accountable activity of the Parliament/MPs. The consequent conclusion is that no parliamentary reform has ever been discussed with the civil society/think-tanks by parliamentary fractions and, moreover, the cooperation with Moldovan civil society is rather formal and limited to those NGOs which are not critical with regards to the Parliament's activity.

For the case of *Bulgaria*:

- Clear legislative and institutional regulations on free access to information, with the exception of *classified information*, which is a constant source of contention in Bulgaria;
- While the Bulgarian Parliament does use a nominal voting system since 1991, listings of nominal votes of MPs are not displayed on the webpage of the Parliament and are rather difficult to be obtained by interested stakeholders;
- Drafts laws are not posted on-line between first and second reading in plenary sessions;
- As in the case of Romania, there is significant delay in posting important information on the website of the Parliament, such as the legislative program, the minutes of the standing committees etc.;
- Insufficient regulation on the transparency of MPs' related finances.

For the case of *Georgia*:

- The right to freely access information on the parliamentary activity is stated in the fundamental law, which stipulates the publicity of parliamentary sittings, as well as the openness/publicity of MPs' votes;
- The Georgian Parliament has a website that significantly answers the demand on any kind of information that an interested stakeholder may look for (information on individual MPs, legislative databases, results of votes, reports of the standing committees' sittings). It also offers the possibility of subscribing to newsletters/newspapers issued by the Parliament;
- There still are some legislative gaps that present serious impediments for the FOIA: law on State Secrets; no regulations on penalties in cases when requests for information get late or incomplete responses;
- Lack of a civic pressure on making the activity of the Parliament and other public institutions more transparent and accountable due to a limited knowledge of rights and existing opportunities in that respect.

Having the above mentioned conditions as prerequisites for further advocacy work to be done in each country, partners have also decided that such strategies should be adapted to each local context/variable factors influencing

the overall political life in order to aim for realistic, achievable goals in the future. Moreover, each project partner stated the need to explore proper national political contexts for advancing **clear recommendations targeting to improve the transparency/accountability of national parliaments**. In this framework, project partners have set up their primary advocacy goals to be conducted further at national level as following:

*For the Romanian Parliament:*

- A more clear regulation included in the Internal Standing Orders of the two parliamentary chambers regarding MPs constituency - related activities and obligations;
- More transparent activity of permanent standing committees' in both parliamentary chambers, by further advocating for the introduction of either roll-call (nominal voting) or live broadcasts of meetings, as in the case of the three committees' of the Deputies' Chamber (Juridical Steering Committee, Budget and Finance Steering Committee and Public Administration Steering Committee);
- Facilitating instant and up-dated access to public interest information by expanding the categories of information to be *ex officio* published on the websites of the parliamentary chambers, including financial related information on expenditures engaged with MPs activity;
- Advocating for more responsible and accountable activity of MPs by advancing concrete proposals for sanctioning chronic absenteeism.

*For the Moldovan Parliament:*

- Alternative approach of the Speaker of the Parliament in advocating the advantages of introducing an electronic voting system for both the electorate and the staff of the Moldovan Parliament;
- Approaching candidates for the next general elections with practical recommendations (and partnership proposals) to "open the Moldovan Parliament" and urge other Moldovan non-governmental organizations to stand for this goal;
- Identifying funding opportunities and technical assistance for improving the logistics of the Parliament (electronic voting devices, display of information on the website etc.).

*For the Bulgarian Parliament:*

- Advocating for extensive use of websites platforms for displaying *all* information related to parliamentary activities except from State secrets and classified information;
- Stopping the phenomenon of “multiple voting” - that is MPs lending their electronic cards to colleagues for voting - through clear sanctions;
- Urging MPs to make more use of the resources invested in administering their web pages, by including useful information about their work in the constituency offices (schedule of work, type of activities etc.);
- Calling for a public register of MPs’ experts and staff, in order to strengthen the connections for further participatory lawmaking processes.

*For the Georgian Parliament:*

- Both, the Parliament as well as the civil society should invest more time and effort in informing citizens more about their rights on FOIA;
- Strict control over the fulfillment of the MP’s obligation to meet regularly with citizens and public representatives is necessary;
- The legislative process has to become more participatory and involve as many actors from the civil society as possible.

The project opened the way for new and challenging horizons of cooperation between countries in the region. Apart from the 4 case studies analyzed hereby, other NGOs from countries in the Black Sea Region have shared their similar experiences in monitoring and advocating for transparent and accountable parliaments in their countries. It is worth mentioning in that respect the example of TUMIKOM (Association of Committees for Monitoring Parliamentarians and Elected Officials in Turkey), which provided an excellent background of participatory/monitoring activities through the periodic release of comprehensive statistic information on parliamentary works under the form of either national or local (province) reports assessing the activity of all 550 Turkish MPs. The “Ten Promises” report is also an example of Turkish civil society’s interest in pursuing accountability of elected officials, whom are asked to provide before elections answers to ten questions about democratization process, transparency, political ethics etc.. Their answers are being followed through the mandate while public opinion is informed about the seriousness in keeping the electoral promises.

Another best practice example in terms of adopting and using high-tech transparency mechanisms at the level of the national Parliament is Ukraine. The Verkhovna Rada of Ukraine has a parliamentary radio and television channel, a daily newspaper, an official weekly publication (VR Visnyk) and a monthly magazine, each committee and MP have their own webpages. An electronic voting system is in place and experts are currently working on improving those functions of voting devices that shall prevent the multiple voting malpractices. Active NGOs in Ukraine - such as Parliamentary Development Project for Ukraine (PDPII) ([www.iupdp.org](http://www.iupdp.org)) - are constantly monitoring the legislative process while providing technical and consulting support to Verkhovna Rada in promoting democratic changes, encouraging more open public access to lawmaking process and stimulating the communication process between citizens and the Parliament. According to PDP, there are still issues to be further addressed in Ukraine's efforts of improving transparency of the legislative such as: citizens and CSO community education, improving systems of dealing with citizens' petitions, committee transparency, MP accessibility and PR skills, faction accountability (electoral promises) and legislative - executive cooperation.

Finally we could exemplify the situation in Azerbaijan - expressed by the Chairman of a reputed NGO, Center for Economic and Social Development. The country is far from being settled out in terms of national Parliament's transparency/accountability. Not that the institution would be totally reticent to adopting such mechanisms, but it proved to rather lacking a proper independent, civic pressure and skills in that respect. Consequently, the representative of CESD has suggested for further coalition and transnational work on training/coaching NGOs in Azerbaijan and other countries in the BSR for building professional monitoring and advocacy skills for efficiently interacting with the Parliament.

Based on the above mentioned examples, we could say that NGOs play a fundamental role for promoting transparency of national parliaments; no matter how many legislative provisions a country may have on transparency, they may not work unless periodically tested/monitored by the civil society.

Such initiatives as the present one must be replicated, as NGOs know for the best how important transparency is (whereas media, for example, would almost always go for the sensational or business association would prefer discrete lobbying).

As far as "practicing" transparency at the level of national parliaments, one cannot ignore the political will - therefore a useful advice for those aiming to multiply the experience of the present international research would be to co-

interest politicians in their overtures from the very beginning. Still, this should be done by considering a reasonable level of political pressure onto the project idea, as well as in relation to executive staff that needs to internalize transparency as a value, not as a duty. Therefore, legislation and internal regulation must protect public servants from any political interference in their work.

Difficult access to information in the countries studied in the present report originates also in the insufficient understanding of the leading role of a member of the Parliament - he or she is by definition a *representative*, therefore should not be associated with any executive responsibilities that lie under the authority of other institutions (e.g. mayors, local councils etc.)

In practice, evidence shows that formal mechanisms are not entirely institutionalized in the four countries, and are subject to various secondary conditionalities - therefore NGOs should fight for the process of accessing public interest information to become a regular and uniform practice at the level of all public authorities.

The future of the Parliament as a credible, fundamental pillar of democracy is depending on the commitment to act transparently to all levels and at any time, not being subject to political pressure (like, for instance, during electoral campaigns). The extremely low level of citizens' trust in the Parliament should be "cured" with total transparency and with a pro-active approach towards civil society.

\* \* \*

Summarizing the above mentioned examples, the present study is only opening the way for future reflection; countries in the region - despite visible differences - should bring the dialogue on democracy and transparency as a governing rule to another level and start joining efforts for promoting a stable and fair political climate in each Black Sea country.



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## Annex 1: Questionnaire used for collecting data

### Sample questionnaire for Open Parliaments

The present questionnaire is part of the project *Transparency, accountability and civic participation in the Black Sea Region - a plea for open Parliaments in Romania, Bulgaria, Moldova and Georgia*, implemented in partnership by the Institute for Public Policy (IPP), Romania, IDIS Viitorul, the Republic of Moldova, Centre for Liberal Strategies (CLS), Bulgaria and Caucasus Institute for Peace, Development and Democracy, Georgia (CIPDD), supported by *Black Sea Trust for Regional Cooperation, the German Marshall Fund*.

The research is aiming to analyze the perception of the civil society (NGOs, trade unions, business organizations, and mass-media) from the respective four countries on the openness of the Parliament, on the interest for the legislative activity and on the stakeholders' experience of advocating their interests before MPs. The main aim of this research is to encourage an open debate about the persisting problems in the region in the field of transparency and civic access to public information regarding MPs' activity.

In this context, we kindly ask you to fill in the attached questionnaire in an electronic format and send it to us via e-mail.

Thank you!

1. Name of the organization:

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2. Mission of the organization:

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3. Mention 3 of your organization's experiences from your relation with the Parliament, during the last 3 years.

a) 

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b) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Describe your general interest for the Parliament's activities. (*no more than 5 lines*)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Rank your interest for the Parliamentary activities with a score from 1 to 5 (where 1 means *no interest* and 5 means *the highest one*)

1 ☐    2 ☐    3 ☐    4 ☐    5 ☐

6. Are you rather interested in (*no more than 3 options*)

- ☐ Plenary sessions;  
☐ Steering committee's debates;  
☐ Individual MPs' votes;  
☐ acts and documents issued by the Parliament;  
☐ others.

\_\_\_\_\_

7. Please mention the main 3 ways of accessing public information from the Parliament.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Please mention the main 3 impediments in accessing public information from the Parliament.

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9. Have you formulated inquiries o the Parliament?

10. *(If YES at Q9)* Evaluate the responsiveness of the institution

- ☐ Judicious and satisfactory
- ☐ Incomplete
- ☐ Got no answer

11. Please give us 3 examples of such inquiries from the last 3 years:

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12. In case you that got *no answer*, have initiated a lawsuit against the Parliament?

- ☐ Yes ☐ No

13. *(If YES at Q12)* Give us no more than 3 examples of your strategic litigations on FOIA:

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14. Considering *your organizations' experience in working with the Parliament*, please score the transparency of the Parliament based on a scale from 1 to 5 (where 1 means *total lack of transparency* and 5 means *completely transparent*)

1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐

15. In the future, are you interested in advocacy campaigns in order to raise the transparency of the Parliament?

☐ Yes

☐ No

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16. Are you rather interested in raising the transparency of:

- ☐ Plenary and committee's debates;
- ☐ Individual MPs' votes;
- ☐ acts and documents issued by the Parliament;
- ☐ other

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Name of the person filling in the questionnaire (*optional*): \_\_\_\_\_

Position within the organization: \_\_\_\_\_

*Thank you!*

**Annex 2: Checklist on Open Parliaments criteria used by the project's national coordinators in preparing the country reports**

	Criteria for assessing indicators	Methods of measurement	Binary indicator	Quantitative indicators	Qualitative assessments	Score from 1 to 5 (1= total lack of transparency 5 = completely transparent <sup>122</sup> )	Observations
<b>1.</b>	<b>Legal criteria</b>	<b>Legal text analysis</b>					
<b>1.1.</b>	<b>Constitutional criteria</b>						
<b>1.1.1</b>	The right to information		Present in text/ Not present/ Implicit in text		✓		
<b>1.1.2.</b>	The publicity of Parliament meetings and sessions (stipulated in the Constitution)		Present in text/ Not present/ Implicit in text		✓		

<sup>122</sup> Not all indicators can be assessed using this scale.



1.1.3.	How many citizens can initiate a legislative initiative					✓			
1.2.	Freedom of Information Act								
1.2.1	Is there any specific legislation regulating citizens' free access to public information in your country?				YES/NO				
1.2.2.	if YES to 1.2.1. Definition of public information and confidentiality criteria					✓			
1.2.3.	if YES to 1.2.1. Institutions' legal term to answer the public information requests					✓			
1.3.	Regulations of the Houses of the Parliament								
1.3.1.	General assessment						✓		
1.3.2.	Public access to meetings and sessions: plenary meetings, Standing Bureau, committees				YES/NO in each of the 3 cases				

1.3.3.	Record of meetings and sessions (minutes): plenary meetings, Standing Bureau, steering committees	YES/NO in each of the 3 cases					
1.3.4.	Publicity of records	YES/NO in each of the 3 cases					
1.3.5.	Accessibility to the documents: agenda and working program	YES/NO					
1.3.6.	Recording and displaying nominal/individual votes of MPs	YES/NO					
1.3.7.	Conditions for secret vote				✓		
2.	<b>Assessment of relevant stakeholders (NGOs, trade unions, business community, mass media)</b>						
	Methodology: polls and interviews						Mentioning the differences between different categories of stakeholders
2.1.	Previous experience in relation to the Parliament	YES/NO			Main relevant experience of stakeholders in the last 3 years		
2.2.	General interest for the Parliament's activity (debates,	Stakeholders'			assessments	✓	

	MPs' vote, acts and documents)							
2.3.	General knowledge about regulation and practices of transparency mechanisms in the Parliament					✓		
2.4.	Responsiveness to stakeholders' requests		YES/NO	9 (% of answers)	Cases in the last 3 years	✓		
2.5.	Previous cases of conflicts/strategic litigations in the field of transparency		YES/NO	9 (% of success)	Cases in the last 3 years			
2.6.	Consultation of relevant stakeholders in the deliberative process		YES/NO		Cases in the last 3 years			
2.7.	General opinion of stakeholders with regards to the Parliaments' transparency				Stakeholders' assessments	✓		
2.8.	Future interest expressed by stakeholders with regards to the Parliaments' activities				Stakeholders' assessments			

<i>Accountability mechanisms in practice</i>						
3.	Public interest for the Parliament as reflected in opinion polls		✓	✓	✓	
3.1	Public access to the Parliament sessions: plenary meetings, Standing Bureau, committees			✓	✓	
3.2.	Relevant stakeholders' access to sessions: plenary sessions, Standing Bureau and steering committees' meetings			✓	✓	
3.3.	Accessible information via mass-media, Internet and Parliament's reports			✓	✓	
3.4.	Access to daily/weekly agenda of the plenary/steering committees' meetings			✓	✓	
3.5.	Access to nominal/individual vote of MPs: plenary meetings, Standing Bureau, committees' reports.			✓	✓	
3.6.				✓	✓	



